

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/1. INTRODUCTION/(1) SCOPE OF TITLE/(i) In general/1. Private maritime law and the public international law of the sea.

SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS

1. INTRODUCTION

(1) SCOPE OF TITLE

(i) In general

1. Private maritime law and the public international law of the sea.

This title sets out the law of England and Wales relating to shipping and maritime matters as applied by the Admiralty Court within its jurisdiction¹, being the relevant private maritime law that applies where the public international law of the sea does not². This title is not concerned with military uses of the sea³ (nor with the related issue of prize⁴) but with peaceful uses of the sea, which include the domestic jurisdiction over merchant shipping⁵ and matters of navigation (including safety and security at sea and the avoidance of collisions)⁶. Hovercraft are also discussed⁷. Although maritime lien⁸ and marine salvage⁹ are described in this title, marine insurance and carriage by sea generally are not¹⁰; nor are matters such as the exploitation of the sea and its resources¹¹, the exploitation of the continental shelf¹² or related matters consequent on man's use of the sea¹³. These subjects are covered elsewhere in the work¹⁴.

1 Ie the Admiralty jurisdiction of the High Court assigned to the Admiralty Court, which includes jurisdiction to hear and determine questions and claims as to the possession, ownership or mortgage of a ship, damage done or received by a ship, salvage, towage, pilotage, supply of goods or materials, wages, disbursements, bottomry and forfeiture or condemnation of a ship, and, with certain exceptions, the jurisdiction of the High Court under the Merchant Shipping Act 1995 (as to which see PARA 16 et seq): see the Supreme Court Act 1981 ss 6(1), 20-24; and PARA 85 et seq. Although the sources of the original maritime law were largely non-statutory, the inherent jurisdiction of the Admiralty Court, and the law that it applies, is now governed largely by statute: see PARA 79 et seq.

2 Because the scope of this title is limited to the municipal law of the United Kingdom, the rules that govern international relations between states in shipping and maritime matters are dealt with elsewhere in this work. Specifically, in relation to the rules that are used to govern the legal status of waters, rights of passage and protection, and criminal and civil jurisdiction, see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 121 et seq. This is not to say that the law which is within the cognisance of the Admiralty Court lacks an international aspect, as this is inherent in the subject matter, and is manifest eg in relation to its dealings with non-British ships and with injurious acts committed within its jurisdiction: see PARA 3 et seq. Of course, the United Kingdom is governed also by any international treaties which it has ratified and by the legislation of the European Union: see PARA 8 et seq.

The law relating to landward waters, ie inland waters and the inland waterways, is also dealt with elsewhere in this work: see **WATER AND WATERWAYS**. As to the extent of the territorial and non-territorial sea, the baselines used for delimitation, and associated rights see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 121 et seq. As to the sovereignty of airspace which is superjacent to the sea see **AIR LAW**.

3 See **ARMED FORCES** and **WAR AND ARMED CONFLICT**. As to general maritime issues relating to war and neutrality, however, see PARAS 4-7, 1230.

4 As to which see **PRIZE**.

5 le that which is to be found within the relevant parts of the Merchant Shipping Act 1995 and other statutes such as the Shipping and Trading Interests (Protection) Act 1995: see PARA 16 et seq. As to the provisions governing vessels which come within the jurisdiction of the Merchant Shipping Act 1995 see PARA 229 et seq; and as to the crew and crewing requirements under the Merchant Shipping Act 1995 see PARA 423 et seq. As to offences and legal proceedings arising from the application of these statutes see PARA 1099 et seq.

6 As to pilotage and towage see PARA 562 et seq; as to safety and security at sea see PARA 591 et seq; and as to the avoidance of collisions see PARA 715 et seq. As to accident investigations and inquiries see PARA 844 et seq. As to lighthouse authorities see PARA 1068 et seq.

7 See PARA 381 et seq.

8 See PARA 1014 et seq.

9 See PARA 876 et seq.

10 As to marine insurance see **INSURANCE** vol 25 (2003 Reissue) PARA 215 et seq; and as to carriage by sea see **CARRIAGE AND CARRIERS**. As the limitation of liability in maritime claims, however, see PARA 1042 et seq.

11 As to eg fishing see **AGRICULTURE AND FISHERIES**. As to marine scientific research see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 194.

12 Eg for the purposes of obtaining its fuel and energy reserves (as to which see **FUEL AND ENERGY**, which deals with such matters as offshore workings, offshore storage and installations and submarine pipelines).

13 As to eg marine pollution see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**.

14 See notes 10-13.

UPDATE

1 Private maritime law and the public international law of the sea

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/1. INTRODUCTION/(1) SCOPE OF TITLE/(ii) English Private Maritime Law/2. English maritime law.

(ii) English Private Maritime Law

2. English maritime law.

Maritime law¹ is not the ordinary municipal law of England and Wales, but is the law which either is binding on the Admiralty Court by statute or has been adopted by the court by decision, tradition and principle². It comprises both the inherent jurisdiction of the former High Court of Admiralty³, the extent of which jurisdiction is to be deduced from practice or judgments⁴, and law derived from statute⁵. Statute law has now superseded to a considerable extent the original maritime law; and the Admiralty jurisdiction of the High Court is largely governed by statute⁶.

1 In relation eg to navigation on the high seas beyond the territorial limits of the United Kingdom maritime law was said to be 'those rules of navigation which usually prevail among nations navigating the seas where the collision takes place': *The Zollverein* (1856) Sw 96 at 99 per Dr Lushington. It was this law which was applied by the English Admiralty Court in cases of collision on the high seas, not the law of the ship's flag: see eg *Chartered Mercantile Bank of India, London and China v Netherlands India Steam Navigation Co Ltd* (1883) 10 QBD 521 at 545, 5 Asp MLC 65 at 71, CA, per Lindley LJ. The statement as to the nature of maritime law made in *The Zollverein* was made in reference to the law apart from statute, in particular apart from the effect of the Merchant Shipping Act Amendment Act 1862 s 25 (repealed), which established collision regulations, and s 54 (repealed), which rendered the provisions for limitation of liability applicable to foreign ships. As to the provisions now in force relating to the prevention of collisions see PARA 715 et seq; and as to the provisions now in force relating to the limitation of liability in maritime claims see PARA 1042 et seq. The Admiralty Court applied the general rule of the sea to a ship belonging to the Crown to which the merchant shipping legislation did not apply: see *HMS Topaze* (1864) 10 LT 659 at 661; *HMS Supply* (1865) 12 LT 799.

2 See *The Gas Float Whitton No 2* [1896] P 42 at 47, 8 Asp MLC 110 at 111, CA (affd sub nom *Wells v Gas Float Whitton No 2 (Owners)* [1897] AC 337, 8 Asp MLC 272, HL) (a salvage case), citing *The Gaetano and Maria* (1882) 7 PD 137 at 143, 4 Asp MLC 535 at 539, 540, CA; and see PARA 82. The maritime law so adopted has been referred to as part of the common law: see eg *Chartered Mercantile Bank of India, London and China v Netherlands India Steam Navigation Co Ltd* (1883) 10 QBD 521 at 537, 5 Asp MLC 65 at 68, CA, per Lord Esher MR.

3 As to the origin and exercise of the jurisdiction of Admiralty courts see PARA 79 et seq. The inherent jurisdiction of the Admiralty Court is derived from that of the High Court of Admiralty, as extended by the Admiralty Court Act 1840, the Admiralty Court Act 1854 and the Admiralty Court Act 1861 (all now repealed). The principal subjects of jurisdiction left with the Admiralty Court after its conflict with the common law courts were injurious acts committed on the high seas, suits of salvage, suits of possession, cases of hypothecation (since the contract of hypothecation was not recognised by the common law), and cases concerning seamen's wages: see PARA 80.

4 *The Gas Float Whitton No 2* [1896] P 42 at 48, 8 Asp MLC 110 at 111, CA; affd sub nom *Wells v Gas Float Whitton No 2 (Owners)* [1897] AC 337, 8 Asp MLC 272, HL.

5 As to the current merchant shipping legislation see PARA 16 et seq.

6 See the Supreme Court Act 1981 ss 20-24; and PARA 85 et seq.

UPDATE

2 English maritime law

NOTE 6--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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3. Extended scope of English jurisdiction.

Maritime law is principally within the cognisance of the Admiralty Court¹ and necessarily has international aspects². The jurisdiction of the Admiralty Court has long extended to foreign ships on the high seas³, except ships of a foreign sovereign state used for public purposes⁴, and to injurious acts committed on the high seas⁵.

The rules on jurisdiction which apply in relation to tort can no longer draw a sharp distinction between torts which took place in England and torts which took place outside. The English court has jurisdiction in respect of torts, whether English or foreign, whenever it has jurisdiction in personam over the defendant⁶.

1 As to Admiralty jurisdiction and Admiralty courts see PARA 79 et seq. The civil Admiralty jurisdiction of the former High Court of Admiralty is vested in the High Court: see **COURTS** vol 10 (Reissue) PARA 601 et seq. The Admiralty jurisdiction of the High Court is now governed principally by the Supreme Court Act 1981 ss 20-24: see PARA 85 et seq.

Although the Merchant Shipping Act 1995 s 14 (offences relating to a ship's British connection) (see PARA 1116) applies to things done outside, as well as to things done within, the United Kingdom, criminal jurisdiction over eg crimes committed in whole or in part in a British ship is not within the scope of this title, but is considered elsewhere. It arose out of Admiralty jurisdiction but, if the trial is in England or Wales, would be exercised as part of the general criminal jurisdiction: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1059 et seq. Foreigners in a British ship are subject to English criminal jurisdiction: see *R v Keyn* (1876) 2 Ex D 63 at 161 per Cockburn CJ; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1057. Similarly, carriage by sea and the principles of English law relating to the sale of goods are not within the scope of this title, even where the goods are to be carried in ships. As to the law relating to charterparties, bills of lading and the carriage of goods by sea see **CARRIAGE AND CARRIERS**; and as to the general law concerning contracts for the sale of goods see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 27 et seq. As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 See eg *The Charkieh* (1873) LR 4 A & E 120 at 122, where Sir R Phillimore said, in relation to the Admiralty Court, that the court administers private international law and has jurisdiction notwithstanding that the parties are foreigners. English maritime law, apart from statute, should be distinguished from the international law administered, subject to statute, in regard to prize: see **PRIZE** vol 36(2) (Reissue) PARA 801 et seq. The instance court of Admiralty was a municipal court, different from a court of Admiralty acting under prize commission: see *The Wild Ranger* (1862) 32 LJPM & A 49 at 56 per Dr Lushington. The term 'instance court' signified the civil court as distinct from the prize court. The records of the instance court were kept distinct from those of the prize court in and after the latter half of the seventeenth century.

3 See eg *The Mali Ivo* (1869) LR 2 A & E 356 (collision); *Chartered Mercantile Bank of India, London and China v Netherlands, India Steam Navigation Co Ltd* (1883) 10 QBD 521 at 537, 545, 5 Asp MLC 65 at 68, 71, CA; *Mersey Docks and Harbour Board v Turner, The Zeta* [1893] AC 468 at 482-486, 7 Asp MLC 369 at 373, 374, HL. As to maritime torts generally see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 372.

4 See *The Parlement Belge* (1880) 5 PD 197, 4 Asp MLC 234, CA (action in rem); *The Annette, The Dora* [1919] P 105. As to foreign sovereign immunity from process and its waiver see PARA 90 et seq.

5 *The Tubantia* [1924] P 78 at 86, 18 Ll L Rep 158 at 159 (trespass to the possession of a salvor). A distinction must be drawn between civil and criminal jurisdiction. As to Admiralty jurisdiction in relation to criminal acts see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1056, 1057; and as to jurisdiction in relation to torts see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 372.

6 See the Private International Law (Miscellaneous Provisions) Act 1995 Pt III (ss 9-15); and **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 372.

UPDATE

3 Extended scope of English jurisdiction

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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(iii) Maritime Issues relating to War and Neutrality

4. Requisition of British ships.

In time of war or national emergency, the Crown has a prerogative right to requisition British ships in territorial waters¹. The requisition of ships and of anything on board ship² and the requisition of shipping space were effected during the 1939-45 war under defence regulations³; and compensation was payable in accordance with statute⁴, there being established a shipping claims tribunal for determining disputes as to the payment of compensation⁵.

1 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 813; and see eg the Prerogative Order in Council Requisition of Ships Order 1982 (4 April 1982) (relating to the Falkland Islands conflict).

2 A mere order to discharge a cargo is not necessarily a requisition of the cargo: see *Nicolaou v Minister of War Transport* [1944] 2 All ER 322.

3 See the Defence (General) Regulations 1939, SR & O 1939/927, regs 53, 54 (revoked).

4 See the Compensation (Defence) Act 1939 ss 1(1)(b), 4-6; and **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 508 et seq.

5 See the Compensation (Defence) Act 1939 s 8(1), (2); and **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 514. As to insurance of ships against war risks see **INSURANCE** vol 25 (2003 Reissue) PARA 336 et seq.

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5. War pensions.

The Secretary of State¹ has power to make awards:

- 1 (1) to mariners in respect of war injuries and detention²;
- 2 (2) to pilots, apprentice pilots etc³;
- 3 (3) to certain other persons serving on naval ships⁴;
- 4 (4) to seafarers⁵; and
- 5 (5) to seamen and other persons employed abroad in the 1914-18 war⁶.

1 As to the Secretary of State for these purposes see **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARAS 625-627.

2 See **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 609.

3 See **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 610.

4 See **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARAS 611-613.

5 See **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 614.

6 See **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 615.

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6. Convoys.

In times of war, it has been the custom for cargo vessels to sail in convoy, to lessen the effect of enemy action¹. As a result, a master of a ship may be placed under a contractual duty to sail in convoy by a term of the contract of carriage², express or implied, to that effect³. In time of war, ships may become subject to orders of the Defence Council⁴, issued with legislative authority, in respect of their movements and navigation generally⁵; and these orders may enjoin obedience to routing instructions issued by the Defence Council or by a convoy commander⁶. It is the duty of the master or other person in command of a vessel comprised in a convoy, under the command of an officer of Her Majesty's naval forces or of any person appointed in that behalf with the authority of the Defence Council, to obey, in all matters relating to the navigation or security of the convoy, any directions which may be given:

- 6 (1) where the convoy is escorted by any of Her Majesty's ships or vessels, by the commanding officer of any such ship or vessel;
- 7 (2) in any case, by the officer or other person in command of the convoy,

and to take such precautions for avoiding the enemy as may be required by any such directions⁷.

If any such directions are not obeyed, any such commanding officer, or the officer or other person in command of the convoy, may compel obedience by force of arms⁸. Further, if the master or other person having command of any ship of any of Her Majesty's subjects in convoy with any of Her Majesty's ships of war⁹ wilfully disobeys any lawful signal, instruction or command of the convoy commander or without leave deserts the convoy, he is liable on conviction to a fine of any amount or imprisonment for not more than one year¹⁰.

During the 1939-45 war the duty of obedience to convoy orders overrode contrary obligations under the regulations for preventing collisions at sea¹¹, and the master of a vessel was not, therefore, negligent in not complying with those regulations if he was executing convoy orders¹². Otherwise, masters of vessels remained bound by the duty of good seamanship and, so far as the circumstances permitted, the duty to take the action prescribed by those regulations to avoid collision¹³. Where the master of a vessel accepts and undertakes the duties of a convoy commander, the owners of his vessel are not liable for damage by consequent collision caused by an act of negligence on the part of the master in the course of performing his duties as convoy commander¹⁴.

1 As to the meaning of 'sailing in convoy' see *Hibbert v Pigou* (1783) 3 Doug KB 224. As to extent and condition of sailing in convoy see further *Jefferies v Legendra* (1691) Carth 216; *Lethulier's Case* (1602) 2 Salk 443; *Gordon v Morley*, *Campell v Bordieu* (1747) 2 Stra 1265; *Lilly v Ewer* (1779) 1 Doug KB 72; *Smith v Readshaw* (1781) 2 Park's Marine Insurances (8th Edn) 708; *Manning v Gist* (1782) 3 Doug KB 74; *D'Eguino v Bewicke* (1795) 2 Hy Bl 551; *De Garey v Clagget* (1795) 2 Park's Marine Insurances (8th Edn) 708; *Webb v Thomson* (1797) 1 Bos & P 5; *Audley v Duff* (1800) 2 Bos & P 111; *Anderson v Pitcher* (1800) 2 Bos & P 164. As to sailing in or without convoy in relation to marine insurance see *Harrington v Halkeld* (1778) 2 Park's Marine Insurances (8th Edn) 639; and **INSURANCE** vol 25 (2003 Reissue) PARA 398.

2 As to contracts of carriage see **CARRIAGE AND CARRIERS**.

3 See *Philips v Baillie* (1784) 3 Doug KB 374; *Runquist v Ditchell* (1799) 3 Esp 64; *Magalhaens v Busher* (1814) 4 Camp 54.

4 As to the Defence Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 443 et seq.

5 During the 1939-45 war, the Admiralty had power to make navigation orders and a master of a vessel contravening or not complying with such an order was guilty of an offence: see the Defence (General) Regulations 1939, SR & O 1939/927, reg 43 (revoked).

6 For an example of such a navigation order see *The Vernon City* [1942] P 9; affd [1942] P 61, 72 Ll L Rep 223, CA.

7 Naval Discipline Act 1957 s 131(1) (amended by SI 1964/488).

The Armed Forces Act 2006 provided for the expiry of the Naval Discipline Act 1957 on 8 November 2007 unless continued in force by Order in Council: see the Armed Forces Act 2006 ss 378(2), 382, Sch 17. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2008, SI 2008/1780, has been made under the Armed Forces Act 2006 s 382 and, accordingly, the Naval Discipline Act 1957 continues in force until 8 November 2009: see the Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2008, SI 2008/1780, art 2. However, such an Order may not provide for the continuation of the Naval Discipline Act 1957 beyond the end of the year 2011: see the Armed Forces Act 2006 s 382(4).

8 Naval Discipline Act 1957 s 131(2) (prospectively repealed: see note 7). Neither the person using such force nor any person acting under his orders is liable for any injury, loss of life or damage to or loss of property resulting therefrom: s 131(2) (prospectively repealed).

9 For these purposes, 'any of Her Majesty's ships of war' includes any hired armed ship or vessel in Her Majesty's service: Naval Prize Act 1864 s 2.

10 Naval Prize Act 1864 s 46 (amended by the Courts Act 1971 s 56(4), Sch 11 Pt IV); Criminal Law Act 1977 s 32(1).

11 As to the current regulations see PARA 720 et seq.

12 *The Vernon City* [1942] P 9; affd [1942] P 61, 72 Ll L Rep 223, CA. See also *Larchbank (Owners) v British Petrol (Owners)*, *The Larchbank* [1943] AC 299 at 305, 74 Ll L Rep 135 at 138, HL, per Lord Wright.

13 *The Scottish Musician* [1942] P 128, 72 Ll L Rep 284; *The FJ Wolfe* [1946] P 91, sub nom *A-G v Anglo-American Oil Co Ltd*, *The FJ Wolfe* [1946] 1 All ER 359, CA. See also *The Emlyn* [1918] P 67.

14 *The Glaucus and City of Florence* [1948] P 95, 81 Ll L Rep 131. As to the duty of the commander of a naval escort in respect of the navigation of a convoy and the question of his liability for negligence in carrying out that duty see *The Sobieski* [1949] P 313, [1949] 1 All ER 701, 82 Ll L Rep 370, CA (where a failure to take reasonable care made the escort commander liable personally, but this was not a fault in the navigation of his vessel, hence no contribution was ordered).

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7. Hospital ships.

Hospital ships must in no circumstances be attacked but must be respected and protected at all times¹. Hospital ships are subject to control and search by the conflicting parties and must give assistance without distinction of nationality¹.

Hospital ships must have all their exterior surfaces white and one or more dark red crosses must be painted on each side of the hull and on horizontal surfaces; a white flag with a red cross must be flown at the mainmast².

1 See **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 431.

2 See **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 432. As to the restrictions on the use of the red cross emblem and the words 'Red Cross' and 'Geneva Cross' see **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 432.

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(2) CONVENTIONS AND LEGISLATION

(i) International Conventions and Organisations

8. International Conventions.

Difficulties which might otherwise arise from differences between the law administered by the English Admiralty Court and the law administered by courts of foreign countries, either because of differences in rules of conduct on the high seas adopted in those courts or because of differing statute law, have been lessened or avoided by international Conventions.

Conventions relating to maritime law have been incorporated into English law in one of two ways: by statutory measures whose provisions have the effect of the Convention¹; or by statutory measures which embody the original text of the Convention itself, usually in a Schedule, with separate changes to be made under English law for the satisfactory operation of the Convention². The former method of incorporation may lead to difficulties or ambiguities in interpretation, whereas the latter method should not³.

Among the international Conventions are:

- 8 (1) the International Convention relating to the Arrest of Seagoing Ships 1952⁴;
- 9 (2) the International Convention on Load Lines 1966⁵;
- 10 (3) the International Convention on Tonnage Measurement of Ships 1969⁶;
- 11 (4) the Convention on the International Regulations for Preventing Collisions at Sea (COLREGS) 1972⁷;
- 12 (5) the International Convention for Safe Containers ('CSC') 1972⁸;
- 13 (6) the International Convention for the Safety of Life at Sea ('SOLAS') 1974⁹;
- 14 (7) the Convention on Limitation of Liability for Maritime Claims 1976¹⁰;
- 15 (8) the Merchant Shipping (Minimum Standards) Convention 1976¹¹;
- 16 (9) the Convention on the International Maritime Satellite Organisation ('INMARSAT')¹²;
- 17 (10) the International Convention for the Safety of Fishing Vessels 1977¹³;
- 18 (11) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers ('STCW') 1978¹⁴;
- 19 (12) the International Convention on Maritime Search and Rescue 1979¹⁵;
- 20 (13) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988¹⁶;
- 21 (14) the International Convention on Salvage 1989¹⁷;
- 22 (15) the International Convention on the Removal of Wrecks ('ICRW') 2007¹⁸.

Conventions which govern related activities such as carriage by sea or marine pollution are discussed elsewhere in this work¹⁹.

A Convention for the Establishment of an Inter-Governmental Maritime Consultative Organisation was signed by certain states at Geneva on 6 March 1948, and came into force on 17 March 1958 when acceptances had been deposited by the governments of the necessary number of states with the prescribed tonnage qualifications²⁰.

Relevant measures which bind the United Kingdom may arise also from membership of the European Union²¹.

1 See eg the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, which apply the provisions of the International Convention on Load Lines (London, 5 April to 4 July 1966; TS 58 (1968); Cmnd 3708) to all United Kingdom ships which go to sea (with certain exceptions) and to all sea-going foreign ships within United Kingdom waters (see head (2) in the text; and PARA 671 et seq).

2 See eg the Merchant Shipping Act 1995 s 224(1), (2), Sch 11 Pt I (salvage), which incorporates the International Convention on Salvage (London, 28 April 1989; Cm 1526) (see head (14) in the text; and PARA 891 et seq).

3 As to interpretation see **STATUTES** vol 44(1) (Reissue) PARA 1426; and as to Conventions generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 801, 802; and **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 95 et seq.

4 Ie the International Convention relating to the Arrest of Seagoing Ships 1952 (Brussels, 10 May 1952; Cmd 8954). The Administration of Justice Act 1956 (largely repealed) (see now the Supreme Court Act 1981 Pt II (ss 15-52)) gave effect in English law to the International Convention relating to the Arrest of Seagoing Ships 1952, although the Convention is not mentioned explicitly: see *The Banco*[1971] P 137, [1971] 1 All ER 524, [1971] 1 Lloyd's Rep 49, CA; and PARA 86. The International Convention relating to the Arrest of Seagoing Ships 1952 art 7(2) is implemented by the Civil Jurisdiction and Judgments Act 1982 s 26, which enables the court to retain an arrested ship (or any bail or security given instead) as security for the satisfaction of a judgment of a foreign court which is enforceable in England and Wales, where the ship was arrested in proceedings begun in England and Wales and subsequently stayed or dismissed on jurisdictional grounds: see PARA 86.

5 Ie the International Convention on Load Lines (London, 5 April to 4 July 1966; TS 58 (1968); Cmnd 3708), implemented by the Merchant Shipping (Load Lines) Act 1967 (repealed) (see now the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241; and note 1).

6 Ie the International Convention on Tonnage Measurement of Ships (London, 23 June to 23 December 1969; TS 50 (1982); Cmnd 8716), implemented by the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510 (as to which see PARA 248 et seq).

7 See the International Regulations for Preventing Collisions at Sea (London, 20 October 1972; TS 77 (1977); Cmnd 6962). Vessels to which the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, apply must comply with the provisions of the International Regulations for Preventing Collisions at Sea 1972: see PARA 715 et seq. See also the International Convention on certain Rules concerning Civil Jurisdiction in matters of Collision 1952 (Brussels, 10 May 1952; Cmd 8954), to which the Administration of Justice Act 1956 (largely repealed) gave effect in English law (see now the Supreme Court Act 1981 Pt II (ss 15-52), especially s 22 (cited in PARA 94); and note 4).

8 Ie the International Convention for Safe Containers (Geneva, 2 December 1972; TS 40 (1979); Cmnd 7535). See PARA 660 et seq; and **CARRIAGE AND CARRIERS**.

9 Ie the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874), with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277). The Convention covers safety measures (see PARA 591 et seq), including matters such as the seaworthiness of vessels (as to which see PARA 599 et seq) and the carriage of goods (as to which see PARA 660 et seq; and **CARRIAGE AND CARRIERS**).

10 Ie the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955), implemented by the Merchant Shipping Act 1979 s 17, Sch 4 (repealed) (see now the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I; and PARA 1042 et seq).

11 Ie the Merchant Shipping (Minimum Standards) Convention 1976 (ILO No 147) (Cmnd 7183), implemented by the Merchant Shipping (Safety at Work Regulations) (Non-UK Ships) Regulations 1988, SI 1988/2274 (an amending provision); the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320 (as to which see PARAS 490, 497 et seq); the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962 (as to which see PARA 623 et seq); and the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411 (as to which see PARAS 503, 504).

12 Ie the Convention on the International Maritime Satellite Organisation (INMARSAT) (with Operating Agreement) (London, 3 September 1976; TS 94 (1979); Cmnd 7722) (as to which see **TELECOMMUNICATIONS** vol 97 (2010) PARA 63).

13 le the Torremolinos International Convention for the Safety of Fishing Vessels (London, 1 October 1977 to 13 June 1978; Misc 17 (1978); Cmnd 7252). Compliance with the Torremolinos Protocol (Cmnd 3339) relating to the Torremolinos International Convention for the Safety of Fishing Vessels 1977 is provided for by EC Council Directive 97/70 of 11 December 1997 (OJ L34, 09.02.1998, p 1) setting up a harmonised safety regime for fishing vessels of 24 metres in length and over (amended by EC Commission Directive 1999/19 of 18 March 1999 (OJ L83, 27.03.1999, p 48); EC Commission Directive 2002/35 of 25 April 2002 (OJ L112, 27.04.2002, p 21); and EC Directive 2002/84 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 53)) which is implemented in the United Kingdom by the Fishing Vessels (EC Directive on Harmonised Safety Regime) Regulations 1999, SI 1999/2998 (as to which see **PARAS 604, 605; and AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) **PARA 1022**).

14 le the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (London, 1 December 1978 to 30 November 1979; TS 50 (1984); Cmnd 9266), implemented by the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320 (as to which see **PARAS 490, 497 et seq**), and the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348 (as to which see **PARA 496**).

15 le the International Convention on Maritime Search and Rescue (Hamburg, 9 to 27 April 1979; Misc 19 (1980); Cmnd 7994) (see further EC Council Recommendation 83/419 (OJ L237, 26.8.83, p 34) on the ratification of or accession to the International Convention on Maritime Search and Rescue 1979; and **PARA 15**).

16 le the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988; TS 64 (1995); Cm 2947); and see the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, supplementary to the Rome Convention (Rome, 10 March 1988; TS 64 (1995); Cm 2947). These Conventions (which both entered into force for the United Kingdom on 1 March 1992) have been implemented in the United Kingdom by the Aviation and Maritime Security Act 1990: see **PARA 1210 et seq**.

17 le the International Convention on Salvage (London, 28 April 1989; Cm 1526), implemented by the Merchant Shipping (Salvage and Pollution) Act 1994 s 1(1), Sch 1 Pt I (repealed) (see now the Merchant Shipping Act 1995 Sch 11 Pt I; and **PARA 891 et seq**).

18 le the International Convention on the Removal of Wrecks (Nairobi, 18 May 2007).

19 The most important are: the International Convention for the Prevention of Pollution from Ships (London, 8 October to 2 November 1973; Misc 26 (1974); Cmnd 5748), with Protocol (London, 1 June 1978 to 31 May 1979; Misc 27 (1978); Cmnd 7347) ('MARPOL') (as to which see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) **PARA 404**); and the International Convention on Civil Liability for Oil Pollution Damage (Brussels, 29 November 1969 to 31 December 1970; TS 106 (1975); Cmnd 6183) with Protocol (London, 27 November 1992) ('CLC') (as to which see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) **PARA 442**). As to conventions relating to arbitration and legal procedure see **ARBITRATION** vol 2 (2008) **PARA 1288 et seq**; and as to conventions relating to the carriage of goods and passengers by sea see **CARRIAGE AND CARRIERS**. As to the Convention on Facilitation of International Maritime Traffic (London, 9 April 1965; TS 46 (1967); Cmnd 3299 (amended by TS 63 (1972); Cmnd 5006; annex amended by TS 63 (1978); Cmnd 7243) see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) **PARA 121**.

20 As to the entry into force provisions of the Convention for the Establishment of the Inter-Governmental Maritime Consultative Organisation (1958) (TS 54 (1958); Cmnd 589) see Pt XX (arts 74-77). On 22 May 1982, the name of the Organisation was changed to the International Maritime Organisation. As to the Organisation see **PARA 13**.

21 See **PARA 15 et seq**.

UPDATE

8 International Conventions

NOTES 4, 7--Supreme Court Act 1981 now cited as Senior Courts Act 1981:
Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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9. United Nations Conference on the Law of the Sea 1958.

On 29 April 1958, four Conventions were adopted, following the first United Nations Conference on the Law of the Sea held from 24 February to 27 April in that year at Geneva, on the following subjects¹:

- 23 (1) the territorial sea and the contiguous zone²;
- 24 (2) the high seas³;
- 25 (3) fishing and conservation of the living resources of the high seas⁴; and
- 26 (4) the continental shelf⁵.

There was also an optional Protocol of signature concerning the compulsory settlement of disputes, and nine resolutions were adopted relating to nuclear tests on the high seas, the pollution of the high seas by radioactive materials, the humane killing of marine life and other matters⁶.

1 See the Report on the First United Nations Conference on the Law of the Sea, with Final Act, Conventions and Resolutions (1958) (Cmnd 584). Certain provisions of the 1958 conference were made effective by the Continental Shelf Act 1964 (see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 172) and by the Tokyo Convention Act 1967 s 4 (now repealed) (definition of 'piracy').

2 I.e the Convention on the Territorial Sea and the Contiguous Zone (Geneva, 29 April 1958; TS 3 (1965); Cmnd 2511).

3 I.e the Convention on the High Seas (Geneva, 29 April 1958; TS 5 (1963); Cmnd 1929).

4 I.e the Convention on Fishing and Conservation of the Living Resources of the High Seas (Geneva, 29 April to 31 October 1958; TS 39 (1966); Cmnd 3028).

5 I.e the Convention on the Continental Shelf (Geneva, 29 April to 31 October 1958; TS 39 (1964); Cmnd 2422).

6 See note 1.

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10. United Nations Convention on the Law of the Sea 1982.

On 10 December 1982, the United Nations Convention on the Law of the Sea 1982 ('UNCLOS') was adopted at Montego Bay, Jamaica after nine years of work by the Third United Nations Conference on the Law of the Sea¹. The 1982 Convention entered into force on 16 November 1994, 12 months after the sixtieth instrument of ratification was received².

The 1982 Convention lays down a comprehensive regime of law and order in the world's oceans and seas³, establishing rules governing all uses of the oceans and their resources, including measures relating to:

- 27 (1) the territorial sea and contiguous zone⁴;
- 28 (2) straits used for international navigation⁵;
- 29 (3) archipelago states⁶;
- 30 (4) the exclusive economic zone⁷;
- 31 (5) the continental shelf⁸;
- 32 (6) the high seas⁹;
- 33 (7) regime of islands¹⁰;
- 34 (8) enclosed or semi-enclosed seas¹¹;
- 35 (9) right of access of land-locked states to and from the sea and freedom of transit¹²;
- 36 (10) the Area¹³;
- 37 (11) protection and preservation of the marine environment¹⁴;
- 38 (12) marine scientific research¹⁵;
- 39 (13) development and transfer of marine technology¹⁶;
- 40 (14) settlement of disputes¹⁷; and
- 41 (15) supplementary matters which are contained in annexes to the Convention¹⁸.

The United Kingdom was not an original signatory to the 1982 Convention but became a party to the Convention on 24 August 1997¹⁹.

The 1982 Convention prevails, as between states parties, over the Geneva Conventions on the Law of the Sea of 1958²⁰.

1 le the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941) (the 'United Nations Convention on the Law of the Sea 1982').

2 For many states, the conclusion of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (New York, 28 July 1994; Misc 44 (1994); Cmnd 2705) (see note 13) provided the condition that allowed the entry into force of United Nations Convention on the Law of the Sea 1982. It is important to note that the 1982 Convention has still not been accepted by some significant sea-faring nations and coastal states, such as the United States of America.

3 As to the general introductory provision see the United Nations Convention on the Law of the Sea 1982 Pt I (art 1) (use of terms and scope); as to the general provisions which cover the signatories' general rights and duties under the Convention see Pt XVI (arts 300-304); and as to the provisions which govern the signature, ratification, amendment etc of the Convention see Pt XVII (arts 305-320) (final clauses).

In order to administer and to enforce the regime established by the United Nations Convention on the Law of the Sea 1982, the following bodies are established thereunder:

- 1 (1) the International Seabed Authority (see note 13);
 - 2 (2) the International Tribunal for the Law of the Sea (see note 18);
 - 3 (3) the Commission on the Limits of the Continental Shelf (see note 18).
- 4 Ie the United Nations Convention on the Law of the Sea 1982 Pt II (arts 2-33) which relates to: general provisions (art 2); limits of the territorial sea (arts 3-16); innocent passage in the territorial sea (arts 17-32); and contiguous zone (art 33).
- 5 Ie the United Nations Convention on the Law of the Sea 1982 Pt III (arts 34-45) which relates to: general provisions (arts 34-36); transit passage (arts 37-44); and innocent passage (art 45).
- 6 Ie the United Nations Convention on the Law of the Sea 1982 Pt IV (arts 46-54).
- 7 Ie the United Nations Convention on the Law of the Sea 1982 Pt V (arts 55-75).
- 8 Ie the United Nations Convention on the Law of the Sea 1982 Pt VI (arts 76-85).
- 9 Ie the United Nations Convention on the Law of the Sea 1982 Pt VII (arts 86-120) which relates to: general provisions (arts 86-115); and management and conservation of the living resources of the high seas (arts 116-120).
- 10 Ie the United Nations Convention on the Law of the Sea 1982 Pt VIII (art 121).
- 11 Ie the United Nations Convention on the Law of the Sea 1982 Pt IX (arts 122, 123).
- 12 Ie the United Nations Convention on the Law of the Sea 1982 Pt X (arts 124-132).
- 13 Ie the United Nations Convention on the Law of the Sea 1982 Pt XI (arts 133-191) which relates to: general provisions (arts 133-135); principles governing the Area (arts 136-149); development of resources of the Area (arts 150-155); the Authority (arts 156-185); and settlement of disputes and advisory opinions (arts 186-191). 'Area' means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (art 1(1)(1)); and 'Authority' means the International Seabed Authority (art 1(1)(2)). As to the International Seabed Authority see PARA 12. There is also a supplementary Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (New York, 28 July 1994; Misc 44 (1994); Cmnd 2705), which sought a compromise on the controversial provisions on deep seabed mining and significantly alters certain provisions of the United Nations Convention on the Law of the Sea 1982 Pt XI in favour of a more market orientated approach.
- 14 Ie the United Nations Convention on the Law of the Sea 1982 Pt XII (arts 192-237) which relates to: general provisions (arts 192-196); global and regional co-operation (arts 197-201); technical assistance (arts 202, 203); monitoring and environmental assessment (arts 204-206); international rules and national legislation to prevent, reduce and control pollution of the marine environment (arts 207-212); enforcement (arts 213-222); safeguards (arts 223-233); ice-covered areas (art 234); responsibility and liability (art 235); sovereign immunity (art 236); and obligations under other Conventions on the protection and preservation of the marine environment (art 237).
- 15 Ie the United Nations Convention on the Law of the Sea 1982 Pt XIII (arts 238-265) which relates to: general provisions (arts 238-241); international co-operation (arts 242-244); conduct and promotion of marine scientific research (arts 245-257); scientific research installations or equipment in the marine environment (arts 258-262); responsibility and liability (art 263); and settlement of disputes and interim measures (arts 264, 265).
- 16 Ie the United Nations Convention on the Law of the Sea 1982 Pt XIV (arts 266-278) which relates to: general provisions (arts 266-269); international co-operation (arts 270-274); national and regional marine scientific and technological centres (arts 275-277); and co-operation among international organisations (art 278).
- 17 Ie the United Nations Convention on the Law of the Sea 1982 Pt XV (arts 279-299) which relates to: general provisions and general obligations (arts 279-285); compulsory procedures entailing binding decisions (arts 286-296); and limitations and exceptions to applicability of arts 286-296 (arts 297-299).
- 18 Ie the United Nations Convention on the Law of the Sea 1982 Annex I (highly migratory species); Annex II (Commission on the Limits of the Continental Shelf); Annex III (basic conditions of prospecting, exploration and exploitation); Annex IV (statute of the Enterprise); Annex V (conciliation); Annex VI (statute of the International Tribunal for the Law of the Sea); Annex VII (arbitration); Annex VIII (special arbitration); Annex IX (participation by international organisations). As to the International Tribunal for the Law of the Sea see PARA 11. The purpose

of the Commission on the Limits of the Continental Shelf is to facilitate the implementation of the United Nations Convention on the Law of the Sea 1982 in respect of the establishment of the outer limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (as to which see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 123 et seq).

19 See the London Gazette 29 August 1997; and note 2. Prior to the United Kingdom becoming a signatory to the 1982 Convention, certain provisions had been enacted in primary and secondary legislation which gave effect to the 1982 Convention in part: see eg the Merchant Shipping Act 1995 s 129(1) (as to which see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 362); the Merchant Shipping and Maritime Security Act 1997 s 26, Sch 5 (cited in PARA 1249) and s 28 (cited in PARA 11); the International Sea-Bed Authority (Immunities and Privileges) Order 1996, SI 1996/270 (revoked) (see now the International Sea-Bed Authority (Immunities and Privileges) Order 2000, SI 2000/1815) (cited in PARA 12); and the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 1996, SI 1996/272 (revoked) (see now the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005, SI 2005/2047) (cited in PARA 11).

20 See the United Nations Convention on the Law of the Sea 1982 Pt XVII art 311(1). As to the Geneva Conventions on the Law of the Sea of 1958, which continue to exist and are not abrogated by the United Nations Convention on the Law of the Sea 1982, see PARA 9.

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11. International Tribunal for the Law of the Sea.

The International Tribunal for the Law of the Sea (the 'Tribunal') was established in accordance with Annex VI to the United Nations Convention on the Law of the Sea 1982 to deal with the settlement of disputes¹.

Except in so far as in any particular case any privilege or immunity is waived by the Tribunal, the members of the Tribunal enjoy, when engaged on the business of the Tribunal, the like privileges and immunities as are² accorded to the head of a diplomatic mission³. The members of the Tribunal and the registrar of the Tribunal have exemption from income tax in respect of emoluments received by them as members or as the registrar⁴.

If in any proceedings a question arises whether a person is or is not entitled to any privilege or immunity by virtue of the above provisions, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question is conclusive evidence of that fact⁵.

As from a day to be appointed⁶, the Tribunal has conferred upon it the legal capacities of a body corporate⁷. Privileges and immunities are also conferred on the Tribunal⁸ and, when engaged on the business of the Tribunal and as necessary for the independent exercise of their functions, on members of the Tribunal⁹, the Registrar¹⁰ and other officials of the Tribunal¹¹, as well as on appointed experts¹², agents, counsel and advocates before the Tribunal¹³, and witnesses, experts and persons performing missions by order of the Tribunal¹⁴.

1 See the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941) (the 'United Nations Convention on the Law of the Sea 1982') Annex VI; and PARA 10. The Tribunal is an international court with its seat in Hamburg and has jurisdiction to hear disputes submitted to it in accordance with the 1982 Convention and all matters specifically provided for in any other agreement which confers jurisdiction on it.

2 In accordance with the 1961 Convention Articles (as to which see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 265 et seq): see the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 1996, SI 1996/272, art 3 (prospectively revoked). For these purposes, '1961 Convention Articles' means the Articles, being certain Articles of the Vienna Convention on Diplomatic Relations (Vienna, 18 April 1961; TS 19 (1965); Cmnd 2565), which are set out in the Diplomatic Privileges Act 1964 s 2(1), Sch 1 (as to which see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 265 et seq): see the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 1996, SI 1996/272, art 2 (prospectively revoked).

The International Tribunal for the Law of the Sea (Immunities and Privileges) Order 1996, SI 1996/272 is revoked, and the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005, SI 2005/2047 (as to which see notes 6-14) comes into force, on the date, specified in the London, Edinburgh and Belfast Gazettes, on which the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea (New York, 1 July 1997) (the 'ITLOS Privileges and Immunities Agreement') enters into force in respect of the United Kingdom. However, at the date at which this volume states the law, no such day had been specified.

The International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005, SI 2005/2047, confers privileges and immunities in accordance with the ITLOS Privileges and Immunities Agreement, which the United Kingdom signed but did not ratify because it was not possible to implement the provisions of the Agreement relating to the Tribunal itself using any of the enabling provisions of the International Organisations Act 1968 (as to which see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 309 et seq). The International Organisations Act 2005 was enacted in order to bring the Tribunal within the scope of the International Organisations Act 1968 and thus, in exercise of the powers conferred by ss 1, 5 and by the International Organisations Act 2005 s 8 (as to which see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 309), the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005, SI 2005/2047, was made.

3 International Tribunal for the Law of the Sea (Immunities and Privileges) Order 1996, SI 1996/272, art 3 (prospectively revoked) (see note 2).

4 International Tribunal for the Law of the Sea (Immunities and Privileges) Order 1996, SI 1996/272, art 4 (prospectively revoked) (see note 2).

5 Merchant Shipping and Maritime Security Act 1997 s 28(6). On the coming into force of the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 1996, SI 1996/272 (ie on 24 August 2007: see art 1), the Merchant Shipping and Maritime Security Act 1997 s 28(1)-(5), which made provision corresponding to the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 1996, SI 1996/272, ceased to have effect: see the Merchant Shipping and Maritime Security Act 1997 s 28(7).

As to the Secretary of State see PARA 38.

6 See note 2.

7 See the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005, SI 2005/2047, art 3 (not yet in force) (see note 2).

8 See the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005, SI 2005/2047, arts 4-12 (not yet in force) (see note 2).

9 See the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005, SI 2005/2047, art 13 (not yet in force) (see note 2). For these purposes, 'member of the Tribunal' means an elected member of the Tribunal or a person chosen under the Statute of the International Tribunal for the Law of the Sea contained in the United Nations Convention on the Law of the Sea 1982 Annex VI art 17 (as to which see note 1) for the purpose of a particular case: see the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005, SI 2005/2047, art 2 (not yet in force).

10 See the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005, SI 2005/2047, art 14 (not yet in force) (see note 2). For these purposes, 'Registrar' means the Registrar of the Tribunal and includes any official of the Tribunal acting as Registrar: see art 2 (not yet in force).

11 See the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005, SI 2005/2047, art 15 (not yet in force) (see note 2). For these purposes, 'officials of the Tribunal' means the Registrar and other officers of the Tribunal: see art 2 (not yet in force).

12 See the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005, SI 2005/2047, art 16 (not yet in force) (see note 2). The text refers to experts appointed under the United Nations Convention on the Law of the Sea 1982 Pt XV art 289 (as to which see PARA 10): see the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005, SI 2005/2047, art 16 (not yet in force).

13 See the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005, SI 2005/2047, art 17 (not yet in force) (see note 2).

14 See the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005, SI 2005/2047, art 18 (not yet in force) (see note 2).

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12. International Sea-Bed Authority.

The International Sea-Bed Authority was established under the United Nations Convention on the Law of the Sea 1982¹; and it is the organisation through which States Parties² organise and control all activities of exploration for, and exploitation of, the resources of the sea bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction³. The Enterprise is the organ of that Authority which carries out all those activities, as well as the transporting, processing and marketing of minerals recovered from the sea bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction⁴.

The International Sea-Bed Authority and the Enterprise have conferred upon them the legal capacities of a body corporate⁵. Privileges and immunities⁶ are also conferred on: (1) the Authority⁷ and (separately) the Enterprise⁸; (2) representatives of members of the Authority⁹; (3) the Secretary-General of the Authority (or any official acting on his behalf during his absence from duty) and the Director-General of the Enterprise¹⁰; (4) all officials of the Authority¹¹; and (5) experts (other than officials of the Authority) performing missions on behalf of the Authority¹².

1 See the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941) (the 'United Nations Convention on the Law of the Sea 1982') art 156(1); and PARA 10.

The relevant provisions of the 1982 Convention which establish the International Seabed Authority and set out how it should function are contained in Pt XI Section 4 (arts 156-185), as follows:

- 4 (1) Subsection A (General Provisions), covering the establishment of the Authority (art 156); the nature and fundamental principles of the Authority (art 157); and the organs of the Authority (art 158);
- 5 (2) Subsection B (the Assembly), covering the composition, procedure and voting in and relating to the Assembly (art 159) as well as its powers and functions (art 160);
- 6 (3) Subsection C (the Council), covering the composition, procedure and voting in and relating to the Council (art 160), its powers and functions (art 161) as well as the establishment of organs of the Council, namely an Economic Planning Commission and a Legal and Technical Commission (arts 162-165).
- 7 (4) Subsection D (the Secretariat) (arts 166-169);
- 8 (5) Subsection E (the Enterprise) (art 170);
- 9 (6) Subsection F (the financial arrangements of the Authority) (arts 171-175);
- 10 (7) Subsection G (legal status, privileges and immunities of and connected with the Authority) (arts 176-183);
- 11 (8) Subsection H (suspension of the exercise of rights and privileges of members) (arts 184, 185).

As to the Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea which is the forum designated for the settlement of disputes etc see the United Nations Convention on the Law of the Sea 1982 Pt XI Section 5 (arts 186-191). As to the International Tribunal for the Law of the Sea see PARAS 10-11.

2 For these purposes, 'States Parties' means states which have consented to be bound by the 1982 Convention and for which that Convention is in force: see the United Nations Convention on the Law of the Sea 1982 art 1(2)(1).

3 See the United Nations Convention on the Law of the Sea 1982 art 157(1).

4 See the United Nations Convention on the Law of the Sea 1982 art 170(1).

5 See the International Sea-Bed Authority (Immunities and Privileges) Order 2000, SI 2000/1815, arts 4, 5.

6 In accordance with both the United Nations Convention on the Law of the Sea 1982 and the Protocol on the Privileges and Immunities of the International Seabed Authority (Kingston, 27 March 1998; TS 25 (2004); Cm 6260).

7 See the International Sea-Bed Authority (Immunities and Privileges) Order 2000, SI 2000/1815, arts 6-13.

8 See the International Sea-Bed Authority (Immunities and Privileges) Order 2000, SI 2000/1815, arts 14, 15. Articles 6-12 do not apply to the Enterprise but art 13 (relief, under arrangements made by the Secretary of State, by way of a refund of insurance premium tax and air passenger duty paid in the exercise of official activities) does: see art 14.

9 See the International Sea-Bed Authority (Immunities and Privileges) Order 2000, SI 2000/1815, art 16 (amended by virtue of the British Overseas Territories Act 2002 s 2(3)).

10 See the International Sea-Bed Authority (Immunities and Privileges) Order 2000, SI 2000/1815, art 17 (amended by virtue of the British Overseas Territories Act 2002 s 2(3); and by SI 2006/1075).

11 See the International Sea-Bed Authority (Immunities and Privileges) Order 2000, SI 2000/1815, art 18.

12 See the International Sea-Bed Authority (Immunities and Privileges) Order 2000, SI 2000/1815, art 19 (amended by virtue of the British Overseas Territories Act 2002 s 2(3)).

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13. The International Maritime Organisation.

The International Maritime Organisation (the 'IMO') was established under a Convention which came into force in 1958¹. The purposes of the IMO are:

- 42 (1) to provide machinery for co-operation among governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade, and to encourage the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships²;
- 43 (2) to encourage the removal of discriminatory action and unnecessary restrictions by governments affecting shipping engaged in international trade so as to promote the availability of shipping services to the commerce of the world without discrimination³;
- 44 (3) to provide for the consideration by the IMO of matters concerning unfair restrictive practices by shipping concerns⁴;
- 45 (4) to provide for the consideration by the IMO of any matters concerning shipping that may be referred to it by any organ or specialised agency of the United Nations⁵;
- 46 (5) to provide for the exchange of information among governments on matters under consideration by the IMO.

In general, membership of the organisation is open to all states⁷. Decisions are made by a majority vote, each member having one vote⁸.

The IMO consists of an assembly, a council, a maritime safety committee, a legal committee, a marine environment protection committee ('MEPC'), a technical co-operation committee, together with such subsidiary organs as the IMO may at any time consider necessary, as well as a secretariat⁹.

The headquarters of the IMO are in London¹⁰.

Provision is made to regulate the IMO's relationships and co-operation with the United Nations (including a duty to co-operate with the United Nations' specialised agencies), as well as with intergovernmental organisations and non-governmental organisations¹¹.

The Convention under which the IMO was established may be amended¹²; and provision is made for the settlement of disputes concerning its interpretation¹³.

In the United Kingdom, the IMO has the legal capacity of a body corporate¹⁴. Privileges and immunities¹⁵ are conferred on: (a) the IMO¹⁶; (b) representatives of members of the IMO on any of its organs at meetings convened by it¹⁷; (c) every person designated by a member of the IMO as its principal permanent representative or acting principal permanent representative to the IMO in the United Kingdom (and on members of their family forming part of their household)¹⁸; (d) its officers¹⁹; and (e) experts (other than officers of the IMO) serving on any committee of the IMO or employed on missions on behalf of the IMO²⁰.

- 1 See the Convention for the Establishment of the Inter-Governmental Maritime Consultative Organisation (1958) (TS 54 (1958); Cmnd 589) (the 'IMO Convention 1958'); and PARA 8. On 22 May 1982, the name of the organisation was changed from the Inter-Governmental Maritime Consultative Organisation to the International Maritime Organisation (the 'IMO').
- 2 See the IMO Convention 1958 Pt I art 1(a). A further purpose is to deal with administrative and legal matters related to the purposes set out in Pt I art 1: see Pt I art 1(a).
- 3 See the IMO Convention 1958 Pt I art 1(b). Assistance and encouragement given by a government for the development of its national shipping and for purposes of security do not in themselves constitute discrimination, provided that such assistance and encouragement is not based on measures designed to restrict the freedom of shipping of all flags to take part in international trade: see Pt I art 1(b).
- 4 See the IMO Convention 1958 Pt I art 1(c). The purpose set out under head (3) in the text must be conducted in accordance with Pt II (arts 2, 3) (functions), which state that the IMO provides for the drafting of conventions, agreements or other suitable instruments, provides machinery for consultation among members and exchange of information and facilitates technical co-operation (see Pt II art 2); and that, for matters capable of settlement through the normal processes of international shipping business, the IMO should recommend their resolution in that manner (see Pt II art 3): see Pt I art 1(c).
- 5 See the IMO Convention 1958 Pt I art 1(d).
- 6 See the IMO Convention 1958 Pt I art 1(e).
- 7 See the IMO Convention 1958 Pt III arts 4-10.
- 8 See the IMO Convention 1958 Pt XIII art 57.
- 9 See the IMO Convention 1958 Pt IV art 11. As to the constitution and functions of these bodies, and as to finances and rating, see Pts V-XII (arts 15-56).
- 10 See the IMO Convention 1958 Pt XIV art 58. The full postal address of the International Maritime Organisation is 4 Albert Embankment, London SE1 7SR. The site of the headquarters may be changed, if necessary, by a two-thirds' majority vote of the assembly; and the assembly may hold sessions in any place other than the headquarters if the council deems it necessary: see Pt XIV art 58.
- 11 See the IMO Convention 1958 Pt XV (arts 59-63). The United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941) (the 'United Nations Convention on the Law of the Sea 1982') (as to which see PARA 10) covers some issues not regulated under IMO treaty instruments eg the jurisdictional power of the coastal state.
- 12 See the IMO Convention 1958 Pt XVII (arts 66-68).
- 13 See the IMO Convention 1958 Pt XVIII (arts 69, 70). Questions or disputes over interpretation or application of the Convention are referred to the Assembly and, if they cannot be settled, are referred to the International Court of Justice for an advisory opinion: see Pt XVIII.
- 14 See the International Maritime Organisation (Immunities and Privileges) Order 2002, SI 2002/1826, arts 4, 5.
- 15 As to the IMO Convention provisions on legal capacity, privileges and immunities which should be applied by members and by the organisation see the IMO Convention 1958 Pt XVI (arts 64, 65).
- 16 See the International Maritime Organisation (Immunities and Privileges) Order 2002, SI 2002/1826, arts 6-13.
- 17 See the International Maritime Organisation (Immunities and Privileges) Order 2002, SI 2002/1826, art 14.
- 18 See the International Maritime Organisation (Immunities and Privileges) Order 2002, SI 2002/1826, art 15.
- 19 See the International Maritime Organisation (Immunities and Privileges) Order 2002, SI 2002/1826, arts 16-18.
- 20 See the International Maritime Organisation (Immunities and Privileges) Order 2002, SI 2002/1826, art 19.

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14. Comité Maritime International.

The Comité Maritime International is a non-governmental not-for-profit international organisation established in Antwerp in 1897, the object of which is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects; to that end it promotes the establishment of national associations of maritime law and co-operates with other international organisations¹. The domicile of the Comité Maritime International is established in Belgium².

The Comité Maritime International consists of national, or multinational, associations of maritime law, the objects of which conform to that of the Comité Maritime International and the membership of which is open to persons, individuals or bodies corporate, who either are involved in maritime activities or are specialists in maritime law³.

The Assembly of the Comité Maritime International consists of all its members and the members of the Executive Council⁴; and the functions of the Assembly are:

- 47 (1) to elect the officers of the Comité Maritime International⁵;
- 48 (2) to elect members of and to suspend or expel members from the Comité Maritime International⁶;
- 49 (3) to fix the amounts of subscriptions payable by members to the Comité Maritime International⁷;
- 50 (4) to elect auditors⁸ and to consider and, if thought fit, approve the accounts and the budget⁹;
- 51 (5) to consider reports of the Executive Council and to take decisions on the future activity of the Comité Maritime International¹⁰;
- 52 (6) to approve the convening and decide the agenda of, and ultimately approve resolutions adopted by, international conferences¹¹;
- 53 (7) to adopt rules governing the expulsion of members¹²;
- 54 (8) to adopt rules of procedure not inconsistent with the provisions of the Constitution¹³; and
- 55 (9) to amend the Constitution of the Comité Maritime International¹⁴.

The Comité Maritime International meets in International Conference upon dates and at places approved by the Assembly, for the purpose of discussing and adopting resolutions upon subjects on an agenda likewise approved by the Assembly¹⁵.

1 See the Constitution of the Comité Maritime International (2001) art 1.

2 See the Constitution of the Comité Maritime International (2001) art 2. The Comité Maritime International is domiciled in the City of Antwerp, and its registered office is at Everdijstraat 43 B-2000 Antwerp, Belgium: see art 2.

3 See the Constitution of the Comité Maritime International (2001) art 3(I)(a). As to membership of the Comité Maritime International see art 3(I)(a)-(f); as to expulsion see art 3(II)(a)-(g); and as to the liability of members for obligations of the Comité Maritime International see art 3(III).

4 See the Constitution of the Comité Maritime International (2001) art 4. As to meetings of the Assembly and quorum see art 5; and as to the agenda and voting see art 6. Provision is made for officers of the Comité

Maritime International (see Pt III (arts 8-16)) and its Executive Council (see Pt IV (arts 17-19)). As to financial matters and the liability of the Comité Maritime International see arts 22, 23.

- 5 See the Constitution of the Comité Maritime International (2001) art 7(a).
- 6 See the Constitution of the Comité Maritime International (2001) art 7(b).
- 7 See the Constitution of the Comité Maritime International (2001) art 7(c). As to arrears of subscriptions see art 21.
- 8 See the Constitution of the Comité Maritime International (2001) art 7(d).
- 9 See the Constitution of the Comité Maritime International (2001) art 7(e).
- 10 See the Constitution of the Comité Maritime International (2001) art 7(f).
- 11 See the Constitution of the Comité Maritime International (2001) art 7(g).
- 12 See the Constitution of the Comité Maritime International (2001) art 7(h).
- 13 See the Constitution of the Comité Maritime International (2001) art 7(i).
- 14 See the Constitution of the Comité Maritime International (2001) art 7(l).
- 15 See the Constitution of the Comité Maritime International (2001) art 20.

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(ii) EC Legislation

15. Shipping- and maritime-related measures of the European Community.

The policy of the European Community in relation to measures governing international shipping and seaborne trade concentrated initially on encouraging member states to ratify, or to accede to, existing international Conventions, which were often promulgated under the auspices of other multi-national organisations like the United Nations or the International Maritime Organisation¹. Member states were, however, reluctant to accept a legal obligation to conclude Conventions (generally because they wished to retain competence in the relevant areas for themselves) so Community encouragement began to take the form of EC Council Recommendations, as follows:

- 56 (1) an EC Council Recommendation of 26 June 1978² on the ratification of the International Convention for the Safety of Life at Sea 1974 ('SOLAS')³, the International Convention for the Prevention of Pollution from Ships ('MARPOL')⁴, and an International Labour Convention concerning minimum standards in merchant ships⁵;
- 57 (2) an EC Council Recommendation of 21 December 1978⁶ on the ratification of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978⁷;
- 58 (3) an EC Council Recommendation of 23 September 1980⁸ on the ratification of the Torremolinos International Convention for the Safety of Fishing Vessels⁹;
- 59 (4) an EC Council Recommendation of 25 July 1983¹⁰ on the ratification of or accession to the International Convention on Maritime Search and Rescue (SAR)¹¹.

Also of note is an EC Council Decision of 13 September 1977¹² on setting up a consultation procedure on relations between member states and third countries in shipping matters and on action relating to such matters in international organisations.

Increasingly, however, Community measures have sought to regulate spheres of activity in the area of shipping and maritime law, the main such measures being:

- 60 (a) an EC Council Directive of 21 December 1978¹³ on pilotage in the North Sea;
- 61 (b) an EC Council Directive of 31 March 1992¹⁴ on the minimum safety and health requirements for improved medical treatment onboard vessels;
- 62 (c) an EC Council Directive of 22 November 1994¹⁵ on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations;
- 63 (d) an EC Council Directive of 19 June 1995¹⁶ on port state control of shipping;
- 64 (e) an EC Council Directive of 25 June 1996¹⁷ establishing a common model for an identity card for inspectors carrying out port state control;
- 65 (f) an EC Council Directive of 20 December 1996¹⁸ on marine equipment;
- 66 (g) an EC Council Directive of 29 April 1999¹⁹ on a system of mandatory surveys for the safe operation of regular Ro-Ro ferry and high-speed passenger craft services;

- 67 (h) an EC Council Directive of 21 June 1999²⁰ concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association ('ECSA') and the Federation of Transport Workers' Unions in the European Union ('FST');
- 68 (i) a Directive of the European Parliament and of the Council of 13 December 1999²¹ concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports;
- 69 (j) a Directive of the European Parliament and of the Council of 4 April 2001²² on the minimum level of training of seafarers;
- 70 (k) a Regulation of the European Parliament and of the Council of 18 February 2002²³ on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers;
- 71 (l) a Regulation of the European Parliament and of the Council of 27 June 2002²⁴ establishing a European Maritime Safety Agency;
- 72 (m) a Directive of the European Parliament and of the Council of 27 June 2002²⁵ establishing a Community vessel traffic monitoring and information system;
- 73 (n) a Regulation of the European Parliament and of the Council of 5 November 2002²⁶ establishing a Committee on Safe Seas and the Prevention of Pollution from Ships ('COSS');
- 74 (o) a Directive of the European Parliament and of the Council of 4 November 2003²⁷ concerning certain aspects of the organisation of working time;
- 75 (p) a Regulation of the European Parliament and of the Council of 31 March 2004²⁸ on enhancing ship and port facility security;
- 76 (q) a Regulation of the European Parliament and of the Council of 21 April 2004²⁹ on the transfer of cargo and passenger ships between registers within the Community;
- 77 (r) a Regulation of the European Parliament and of the Council of 15 February 2006³⁰ on the implementation of the International Safety Management Code within the Community.
- 78 (s) a Council Regulation of 25 September 2006³¹ applying EC competition law to liner conferences.

Other measures govern related activities such as carriage by sea or marine pollution and are discussed elsewhere in this work³².

1 As to a survey of the international Conventions which apply to shipping and maritime law see PARA 8 et seq. The policy of the European Community cited in the text served not only to promote higher standards but also to secure a harmonisation of the conditions of competition between the fleets of the member states.

2 I.e. EC Council Recommendation 78/584 (OJ L194, 19.7.78, p 17).

3 I.e. the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874), with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277) (as to which see PARA 8). As to implementation see PARA 632.

4 I.e. the International Convention for the Prevention of Pollution from Ships (London, 8 October to 2 November 1973; Misc 26 (1974); Cmnd 5748), with Protocol (London, 1 June 1978 to 31 May 1979; Misc 27 (1978); Cmnd 7347). As to pollution see also EC Council Decision 2004/246 (OJ L78, 16.3.2004, p 22) authorising the member states to ratify the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992; but as to marine pollution generally see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**.

5 I.e. the International Labour Convention No 147 (Geneva, 11 November 1976; TS 22 (1984); Cmnd 9186).

6 I.e. EC Council Recommendation 79/114 (OJ L33, 8.2.79, p 31).

7 le the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (London, 1 December 1978 to 30 November 1979; TS 50 (1984); Cmnd 9266) (the 'STCW Convention') (as to which see PARA 8).

8 le EC Council Recommendation 80/907 (OJ L259, 2.10.80, p 29).

9 le the Torremolinos International Convention for the Safety of Fishing Vessels (London, 1 October 1977 to 13 June 1978; Misc 17 (1978); Cmnd 7252) (as to which see PARA 8).

10 le EC Council Recommendation 83/419 (OJ L237, 26.8.83, p 34).

11 le the International Convention on Maritime Search and Rescue (Hamburg, 9 to 27 April 1979; Misc 19 (1980); Cmnd 7994) (as to which see PARA 8).

12 le EC Council Decision 77/587 (OJ L239, 17.9.77, p 23).

13 le EC Council Directive 79/115 (OJ L33, 8.2.79, p 32) (as to which see PARA 586).

14 le EC Council Directive 92/29 (OJ L113, 30.4.92, p 19) (amended by EC Regulation 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ L284, 31.10.2003, p 1); and EC Directive 2007/30 of the European Parliament and of the Council of 20 June 2007 (OJ L165, 27.6.2007, p 21)). EC Council Directive 92/29 (OJ L113, 30.4.92, p 19) is implemented in the United Kingdom by the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802 (see PARA 630); and the Merchant Shipping (Ships' Doctors) Regulations 1995, SI 1995/1803 (see PARA 628).

15 le EC Council Directive 94/57 (OJ L319, 12.12.94, p 20) (amended by EC Commission Directive 97/58 of 26 September 1997 (OJ L274, 7.10.1997, p 8); EC Directive 2001/105 of the European Parliament and of the Council of 19 December 2001 (OJ L19, 22.1.2002, p 9); and EC Directive 2002/84 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 53)). EC Council Directive 94/57 (OJ L319, 12.12.94, p 20) is implemented in the United Kingdom by the Merchant Shipping (Ship Inspection and Survey Organisations) Regulations 1996, SI 1996/2908 (see PARA 601); and the Merchant Shipping (High-Speed Craft) Regulations 2004, SI 2004/302 (see PARA 614 et seq).

16 le EC Council Directive 95/21 (OJ L157, 7.7.95, p 1) (amended by EC Council Directive 98/25 of 27 April 1998 (OJ L133, 7.5.1998, p 19); EC Commission Directive 98/42 of 19 June 1998 (OJ L184, 27.6.1998, p 40); EC Commission Directive 1999/97 of 13 December 1999 (OJ L331, 23.12.1999, p 67); EC Directive 2001/106 of the European Parliament and of the Council of 19 December 2001 (OJ L19, 22.1.2002, p 17); and EC Directive 2002/84 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 53)). EC Council Directive 95/21 (OJ L157, 7.7.95, p 1) is implemented in the United Kingdom by the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 2-18) (as to which see PARA 690 et seq).

17 le EC Council Directive 96/40 (OJ L196, 7.8.96, p 8). As to the implementation of port state control measures see note 16.

18 le EC Council Directive 96/98 (OJ L46, 17.2.1997, p 25) (amended by EC Commission Directive 98/85 of 11 November 1998 (OJ L315, 25.11.1998, p 14); EC Commission Directive 2001/53 of 10 July 2001 (OJ L204, 28.7.2001, p 1); EC Commission Directive 2002/75 of 2 September 2002 (OJ L254, 23.9.2002, p 1); and EC Directive 2002/84 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 53)). EC Council Directive 96/98 (OJ L46, 17.2.1997, p 25) is implemented in the United Kingdom by the Merchant Shipping (Marine Equipment) Regulations 1999, SI 1999/1957 (see PARA 646).

19 le EC Council Directive 1999/35 (OJ L138, 1.6.1999, p 1) (amended by EC Directive 2002/84 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 53)). EC Council Directive 1999/35 (OJ L138, 1.6.1999, p 1) is implemented in the United Kingdom by the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152 (as to which see PARA 603).

20 le EC Council Directive 1999/63 (OJ L167, 2.7.1999, p 33), which is implemented in the United Kingdom by the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055 (as to which see PARA 629) and the Merchant Shipping (Hours of Work) Regulations 2002, SI 2002/2125 (as to which see PARA 625).

21 le EC Directive 1999/95 of the European Parliament and of the Council of 13 December 1999 (OJ L14, 20.01.2000, p 29) concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports, which is implemented in the United Kingdom by the Merchant Shipping (Hours of Work) Regulations 2002, SI 2002/2125 (as to which see PARA 625).

22 le EC Directive 2001/25 (OJ L136, 18.5.2001, p 17) (amended by EC Directive 2002/84 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 53); EC Directive 2003/103 of the

European Parliament and of the Council of 17 November 2003 (OJ L326, 13.12.2003, p 28); EC Commission Directive 2005/23 of 8 March 2005 (OJ L62, 9.3.2005, p 14); and EC Directive 2005/45 of the European Parliament and of the Council of 7 September 2005 (OJ L255, 30.9.2005, p 160)). EC Directive 2001/25 (OJ L136, 18.5.2001, p 17) is implemented in part by the Merchant Shipping (Minimum Standards of Safety Communications) Regulations 1997, SI 1997/529 (as to which see PARA 647).

23 le EC Regulation 417/2002 (OJ L64, 7.3.2002, p 1) (amended by EC Regulation 2099/2002 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 1); EC Regulation 1726/2003 of the European Parliament and of the Council of 22 July 2003 (OJ L249, 1.10.2003, p 1); EC Commission Regulation 2172/2004 of 17 December 2004 (OJ L371, 18.12.2004, p 26); and EC Regulation 457/2007 of the European Parliament and of the Council of 25 April 2007 (OJ L113, 30.4.2007, p 1)).

24 le EC Regulation 1406/2002 (OJ L208, 5.8.2002, p 1) (amended by EC Regulation 1644/2003 of the European Parliament and of the Council of 22 July 2003 (OJ L245, 29.9.2003, p 10); EC Regulation 724/2004 of the European Parliament and of the Council of 31 March 2004 (OJ L129, 29.4.2004, p 1); and EC Regulation 1891/2006 of the European Parliament and of the Council of 18 December 2006 (OJ L394, 30.12.2006, p 1)).

25 le EC Directive 2002/59 of the European Parliament and of the Council of 27 June 2002 (OJ L208, 05.08.2002, p 10) establishing a Community vessel traffic monitoring and information system and repealing EC Council Directive 93/75, implemented in the United Kingdom by the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004, SI 2004/2110 (see PARA 659).

26 le EC Regulation 2099/2002 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 1).

27 le EC Directive 2003/88 of the European Parliament and of the Council of 4 November 2003 (OJ L299, 18.11.2003, p 9) concerning certain aspects of the organisation of working time (as to which see PARAS 625, 626).

28 le EC Regulation 725/2004 of the European Parliament and of the Council of 31 March 2004 (OJ L129, 29.04.2004, p 6) on enhancing ship and port facility security. As to implementation in the United Kingdom (in so far as it is necessary) see the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495; and PARA 708 et seq.

See also EC Directive 2005/65 of the European Parliament and of the Council of 26 October 2005 (OJ L310, 25.11.2005, p 28) on enhancing port security; and EC Commission Regulation 324/2008 of 9 April 2008 (OJ L98, 10.04.2008, p 5) laying down revised procedures for conducting Commission inspections in the field of maritime security.

29 le EC Regulation 789/2004 (OJ L138, 30.4.2004, p 19).

30 le EC Regulation 336/2006 (OJ L64, 4.3.2006, p 1), which repealed EC Council Regulation 3051/95 (OJ L320, 30.12.1995, p 14) whose enforcement was provided for under the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022 (amended by SI 2001/3209).

31 le EC Council Regulation 1419/2006 (OJ L269, 28.9.2006, p 1), which repealed EC Council Regulation 4056/86 (OJ L378, 31.12.1986, p 4) and thereby removed the block exemption from the Treaty establishing the European Economic Community, Rome, 25 March 1957) (the 'EC Treaty') arts 81, 82 (as to which see **COMPETITION** vol 18 (2009) PARA 26 et seq) which had been granted to liner shipping conferences: see PARA 78. As to block exemptions generally see **COMPETITION** vol 18 (2009) PARA 67.

See also EC Regulation 1490/2007 of the European Parliament and of the Council of 11 December 2007 (OJ L332, 18.12.2007, p 1), repealing EC Council Regulation 954/79 of 15 May 1979 (OJ L121, 17.5.79, p 1) concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences (as to which see PARA 78).

32 As to measures relating to the carriage of goods and passengers by sea see **CARRIAGE AND CARRIERS**; and as to measures relating to marine pollution and the environment see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**.

UPDATE

15 Shipping- and maritime-related measures of the European Community

NOTES 13-31--See also European Parliament and EC Council Regulation 782/2003 on the prohibition of organotin compounds on ships, which prohibits the application or re-application of on ships of organotin compounds which act as biocides in anti-fouling

systems. See further the Merchant Shipping (Anti-Fouling Systems) Regulations 2009, SI 2009/2796.

NOTE 15--Directive 94/57 replaced: European Parliament and EC Council Directive 2009/15 (OJ L131, 28.5.2009, p 47) and European Parliament and EC Council Regulation 391/2009 (OJ L131, 28.5.2009, p 11).

NOTE 16--From 1 January 2011, Directive 95/21 replaced: European Parliament and EC Council Directive 2009/16 (OJ L131, 28.5.2009, p 57).

NOTE 18--Directive 96/98 further amended: EC Commission Directive 2008/67 (OJ L171, 1.7.2008, p 16); EC Commission Directive 2009/26 (OJ L113, 6.5.2009, p 1).

NOTE 20--The Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) set out in Directive 1999/63 amended in accordance with the adoption by the ILO of the Maritime Labour Convention 2006: EC Council Directive 2009/13 (OJ L124, 20.5.2009, p 30): art 2.

NOTE 22--Directive 2001/25 replaced: European Parliament and EC Council Directive 2008/106 (OJ L323, 3.12.2008, p 33).

NOTE 25--Directive 2002/59 amended: European Parliament and EC Council Directive 2009/17 (OJ L131, 28.5.2009, p 101).

NOTE 28--Directive 2005/65 implemented by the Port Security Regulations 2009, SI 2009/2048.

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(iii) United Kingdom Legislation

A. THE PRESENT STATUTE LAW

16. In general.

There are two principal consolidating Acts relating to merchant shipping:

- 79 (1) the Merchant Shipping Act 1995¹; and
- 80 (2) the Shipping and Trading Interests (Protection) Act 1995².

In addition, there is a considerable body of subordinate legislation made, or having effect as if made, thereunder³.

The Merchant Shipping Act 1995 consolidated the Merchant Shipping Acts 1894 to 1994⁴ and certain other enactments relating to merchant shipping⁵; the Shipping and Trading Interests (Protection) Act 1995 consolidated certain enactments for the protection of shipping and trading interests⁶.

In addition to the statutory controls imposed by the two consolidating Acts, the following related matters are subject to special statutory control:

- 81 (a) hovercraft⁷;
- 82 (b) collisions⁸;
- 83 (c) the protection of wrecks⁹;
- 84 (d) pilotage¹⁰;
- 85 (e) the hijacking etc of ships¹¹;
- 86 (f) port state control¹².

1 Notwithstanding the fact that the Merchant Shipping Act 1995 is stated to have come into force on 1 January 1996 (see s 316), certain provisions relating to masters of ships and seamen, namely s 60 (breaches by seamen of codes of conduct) (see PARA 506), s 80(2), (4) (regulations making provision regarding discharge books) (see PARA 551), and certain provisions relating to skippers of fishing vessels and seamen, namely s 111 (regulations making provision regarding wages and deductions) (see PARA 480), s 115 (regulations making provision regarding hours of work) (see PARA 626), s 116 (production of crew certificates and other documents of qualification) (see PARA 502), s 118 (offences relating to unauthorised alcohol on board a United Kingdom fishing vessel) (see PARA 1165), s 119(2), (3) (regulations making provision regarding disputes about local industrial agreements) (see PARA 506) and s 127 (regulations making provision for securing that the skipper of and every seaman employed or engaged in a United Kingdom fishing vessel is trained in safety matters) (see PARA 594) do not have effect until the Secretary of State by order appoints a day for them to come into force (see s 314(3), Sch 14 para 5(1), (2)). At the date at which this volume states the law, such a day had been appointed in relation to s 116 only: see the Merchant Shipping Act 1995 (Appointed Day No 2) Order 1997, SI 1997/3107, art 2. As to the Secretary of State see PARA 38; and as to his power to make subordinate legislation under the Merchant Shipping Act 1995 generally see PARA 41.

2 The Shipping and Trading Interests (Protection) Act 1995 came into force on 1 January 1996: see s 9(4).

3 See PARA 39 et seq.

4 Ie including provisions of the Merchant Shipping Act 1894, the Merchant Shipping Act 1906, the Merchant Shipping Act 1964, the Merchant Shipping (Load Lines) Act 1967, the Merchant Shipping Act 1979, the Merchant

Shipping Act 1984, the Merchant Shipping Act 1988, the Merchant Shipping (Registration, etc) Act 1993 and the Merchant Shipping (Salvage and Pollution) Act 1994. The Merchant Shipping Act 1894 and most of the subsequent Acts were to be construed as one: see eg the Merchant Shipping (Salvage and Pollution) Act 1994 s 10(2) (repealed).

5 See the Merchant Shipping Act 1995 preamble. However, nothing in the Merchant Shipping Act 1995 affects the Behring Sea Award Act 1894: Sch 14 para 13. As to the Behring Sea Award Act 1894, which regulates sealing in the Behring Sea and adjacent waters, see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1091.

Subsequent to the passing of the two consolidating Acts, the Merchant Shipping and Maritime Security Act 1997 was passed to amend the Merchant Shipping Act 1995 and various other statutory provisions: see the Merchant Shipping and Maritime Security Act 1997 preamble. Certain of the provisions in the 1997 Act came into force on 19 March 1997 (see s 31(4)); and the remainder of the provisions come into force on such day as the Secretary of State may by order made by statutory instrument appoint (see s 31(3)).

6 See the Shipping and Trading Interests (Protection) Act 1995 preamble.

7 See the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (cited in PARA 614 et seq); the Hovercraft Act 1968 (cited in PARA 381 et seq); and the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, Pt III (regs 22-24) (cited in PARA 496).

8 See the Merchant Shipping Act 1995 s 85(3)(k) (regulation-making power); the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75; the International Regulations for Preventing Collisions at Sea (London, 20 October 1972; TS 77 (1977); Cmnd 6962); and PARA 715 et seq. See also the more general provisions relating to safety at sea (cited in PARA 591 et seq) and accident investigations and inquiries (cited in PARA 844 et seq).

9 See the Protection of Wrecks Act 1973; the Merchant Shipping and Maritime Security Act 1997 s 24 (implementation of international agreements relating to the protection of wrecks outside United Kingdom waters); PARAS 1012-1013; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1064.

10 See the Pilotage Act 1987; and PARA 562 et seq.

11 See the Aviation and Maritime Security Act 1990 Pt II (ss 9-17) (offences against the safety of ships and fixed platforms); Pt III (ss 18-46) (protection of ships and harbour areas against acts of violence); and PARA 1210 et seq.

12 See the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, and PARA 690 et seq. See also PARA 15 (EC Directives on port state control).

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17. Territorial extent.

The Merchant Shipping Act 1995¹ extends to England and Wales², Scotland and Northern Ireland³.

Her Majesty may by Order in Council direct that any provision of the Merchant Shipping Act 1995 (and instruments made under the 1995 Act), with such exceptions, adaptations and modifications (if any) as may be specified in the Order, is to extend to any relevant British possession⁴. Such an Order in Council may make such transitional, incidental or supplementary provision as appears to Her Majesty to be necessary or expedient⁵.

Her Majesty may, in relation to any relevant British possession, by Order in Council direct that, with such exceptions, adaptations and modifications, if any, as may be specified in the Order, any of the provisions of the Merchant Shipping Act 1995 are to have effect as if references in them to the United Kingdom included a reference to that possession⁶.

Either such Order in Council may⁷, in its application to any relevant British possession, provide for such authority in that possession as is specified in the Order to furnish the Secretary of State⁸ or the registrar⁹ with such information with respect to the registration of ships in that possession under its law as is specified in the Order or as the Secretary of State may from time to time require, and for any such information to be so furnished at such time or times and in such manner as is or are so specified or, as the case may be, as the Secretary of State may so require¹⁰.

1 le except for the Merchant Shipping Act 1995 s 18 (provision for regulating registration in relevant British possessions of ships other than small ships and fishing vessels by reference to categories of registries) (see PARA 246) and s 193(5) (prospectively repealed) (general lighthouse authority as respects Gibraltar, the Channel Islands and the Isle of Man) (see PARA 1068): see s 315(1).

2 'England' means, subject to any alteration of boundaries of local government areas, the area consisting of the counties established by the Local Government Act 1972 s 1 (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 5, 24), Greater London and the Isles of Scilly: Interpretation Act 1978 s 5, Sch 1. 'Wales' means the combined area of the counties which were created by the Local Government Act 1972 s 20 (as originally enacted) (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 5, 37), but subject to any alteration made under s 73 (consequential alteration of boundary following alteration of watercourse) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 90): Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 9). As to local government areas see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq; and as to boundary changes see **LOCAL GOVERNMENT** vol 69 (2009) PARA 56 et seq. As to Greater London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 29.

3 Merchant Shipping Act 1995 s 315(1).

Without prejudice to s 315(1), the repeals made by the Merchant Shipping Act 1995 do not affect the law in force in any country or territory which is outside the United Kingdom: s 314(3), Sch 14 para 1(1). In particular, the repeal of the Merchant Shipping Act 1894 s 735 does not affect the power of Her Majesty in Council to confirm any legislation made by the legislature of a British possession under s 735 (repealed) as it extends to that possession: Merchant Shipping Act 1995 Sch 14 para 1(2). The provisions of the 1995 Act, including the repeal of any power by Order in Council to extend any enactment to a relevant British possession, or of any enactment which has been so extended, do not extend to any such possession, except in so far as they are extended to that possession by an Order in Council under s 315(2) (see the text and note 4): Sch 14 para 1(3). 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). In the Merchant Shipping Act 1995, unless the context otherwise requires, 'relevant British possession' means the Isle of Man, any of the Channel Islands and any colony: s 313(1). As to the meaning of

'colony' see **STATUTES** vol 44(1) (Reissue) PARA 1383. As to the legal status of the Channel Islands and the Isle of Man (neither of which are within the United Kingdom) see **COMMONWEALTH** vol 13 (2009) PARA 790 et seq; and see also **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

4 Merchant Shipping Act 1995 s 315(2).

As to the making of Orders under the Merchant Shipping Act 1995 generally see PARA 41. At the date at which this volume states the law, the following Orders had been made under s 315(2): the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) (Overseas Territories) Order 1997, SI 1997/2578; the Merchant Shipping (Limitation of Liability for Maritime Claims) (Overseas Territories) Order 1997, SI 1997/2579; the Merchant Shipping (Oil Pollution) (Anguilla) Order 1997, SI 1997/2580; the Merchant Shipping (Oil Pollution) (British Antarctic Territory) Order 1997, SI 1997/2582; the Merchant Shipping (Oil Pollution) (British Indian Ocean Territory) Order 1997, SI 1997/2583; the Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, SI 1997/2584; the Merchant Shipping (Oil Pollution) (Pitcairn) Order 1997, SI 1997/2585 (amended by SI 1998/1067); the Merchant Shipping (Salvage Convention) (Overseas Territories) Order 1997, SI 1997/2586; the Merchant Shipping (Oil Pollution) (Sovereign Base Areas) Order 1997, SI 1997/2587 (amended by SI 1998/1068); the Merchant Shipping (Oil Pollution) (South Georgia and the South Sandwich Islands) Order 1997, SI 1997/2588; the Merchant Shipping (Oil Pollution) (Turks and Caicos Islands) Order 1997, SI 1997/2589; the Merchant Shipping (Oil Pollution) (Virgin Islands) Order 1997, SI 1997/2590; the Merchant Shipping (Oil Pollution) (Jersey) Order 1997, SI 1997/2598; the Merchant Shipping (Oil Pollution and General Provisions) (Guernsey) Order 1998, SI 1998/260; the Merchant Shipping (Oil Pollution) (Pitcairn) (Amendment) Order 1998, SI 1998/1067; the Merchant Shipping (Oil Pollution) (Sovereign Base Areas) (Amendment) Order 1998, SI 1998/1068; the Merchant Shipping (Oil Pollution) (Cayman Islands) Order 1998, SI 1998/1261; the Merchant Shipping (Oil Pollution) (Montserrat) Order 1998, SI 1998/1262; the Merchant Shipping (Oil Pollution) (Saint Helena) Order 1998, SI 1998/1263; the Merchant Shipping (Revocation) (Bermuda) Order 2002, SI 2002/3147; the Merchant Shipping (Confirmation of Legislation and Repeals) (Jersey) Order 2004, SI 2004/1284; the Merchant Shipping (Oil Pollution and General Provisions) (Isle of Man) Order 2004, SI 2004/3041; and the Merchant Shipping (Oil Pollution) (Gibraltar) Order 2004, SI 2004/3042.

By virtue of the Interpretation Act 1978 s 17(2)(b), the following saved instruments continue in force until superseded by an instrument made under s 315: the Merchant Shipping Safety Convention (Isle of Man) Order 1934, SR & O 1934/1414; the Merchant Shipping Safety Convention (Guernsey) No 1 Order 1935, SR & O 1935/562; the Merchant Shipping Safety Convention (Guernsey) No 2 Order 1935, SR & O 1935/563; the Merchant Shipping Safety Convention (Straits Settlements) No 2 Order 1935, SR & O 1935/716; the Merchant Shipping Safety Convention (Singapore) No 1 Order 1953, SI 1953/1218; the Merchant Shipping Safety Convention (Singapore) No 2 Order 1953, SI 1953/1219; the Oil in Navigable Waters (Guernsey) Order 1966, SI 1966/393; the Oil in Navigable Waters (Isle of Man) Order 1966, SI 1966/394; the Merchant Shipping (Load Lines Certificates) (Various Countries) Order 1968, SI 1968/1110; the Wireless Telegraphy (Channel Islands) Order 1969, SI 1969/1369; the Wireless Telegraphy (Isle of Man) Order 1969, SI 1969/1371; the Merchant Shipping (Oil Pollution) (Belize) Order 1975, SI 1975/2164 (amended by SI 1981/214); the Merchant Shipping (Oil Pollution) (Gilbert Islands) Order 1975, SI 1975/2168; the Merchant Shipping (Oil Pollution) (Seychelles) Order 1975, SI 1975/2172; the Merchant Shipping (Oil Pollution) (Solomon Islands) Order 1975, SI 1975/2173; the Merchant Shipping (Oil Pollution) (Tuvalu) Order 1975, SI 1975/2174; the Merchant Shipping Act 1979 (Guernsey) Order 1980, SI 1980/569; the Merchant Shipping Act 1979 (Belize) Order 1980, SI 1980/1509 (amended by SI 1981/420); the Merchant Shipping Act 1979 (British Virgin Islands) Order 1980, SI 1980/1511 (amended by SI 1981/422); the Merchant Shipping Act 1979 (Cayman Islands) Order 1980, SI 1980/1512 (amended by SI 1981/423); the Merchant Shipping Act 1979 (Falkland Islands) Order 1980, SI 1980/1513 (amended by SI 1981/424); the Merchant Shipping Act 1979 (Montserrat) Order 1980, SI 1980/1515 (amended by SI 1981/426); the Merchant Shipping Act 1979 (Pitcairn) Order 1980, SI 1980/1516 (amended by SI 1981/427); the Merchant Shipping Act 1979 (Saint Helena) Order 1980, SI 1980/1517 (amended by SI 1981/428); the Merchant Shipping Act 1979 (Sovereign Base Areas) 1980, SI 1980/1518 (amended by SI 1981/429); the Merchant Shipping Act 1979 (Turks and Caicos Islands) Order 1980, SI 1980/1519 (amended by SI 1981/430); the Merchant Shipping Act 1979 (Isle of Man) Order 1980, SI 1980/1526; the Merchant Shipping (Oil Pollution) Act 1971 (Guernsey) Order 1981, SI 1981/244; the Merchant Shipping Act 1970 (Guernsey) Order 1981, SI 1981/1809; the Merchant Shipping Act 1979 (Guernsey) Order 1981, SI 1981/1810; the Prevention of Oil Pollution Act 1971 (Overseas Territories) Order 1982, SI 1982/1668; the Merchant Shipping Act 1979 (Isle of Man) Order 1984, SI 1984/1161; the Merchant Shipping (Metrication) (Isle of Man) Order 1984, SI 1984/1164; the Merchant Shipping Acts 1983 and 1984 (Isle of Man) Order 1984, SI 1984/1985; the Merchant Shipping (Distress Signals and Prevention of Collisions) (Guernsey) Order 1986, SI 1986/1163 (amended by SI 1989/2410); the Admiralty Jurisdiction (Gibraltar) Order 1987, SI 1987/1263; the Merchant Shipping Act 1974 (Cayman Islands) Order 1988, SI 1988/789; the Merchant Shipping Act 1970 (Cayman Islands) Order 1988, SI 1988/246; the Merchant Shipping Act 1979 (Cayman Islands) Order 1988, SI 1988/790; the Merchant Shipping (Tonnage) (Overseas Territories) Order 1988, SI 1988/1085; the Merchant Shipping Act 1970 (Overseas Territories) Order 1988, SI 1988/1086; the Merchant Shipping Act 1988 (Cayman Islands) Order 1988, SI 1988/1841; the Merchant Shipping Act 1979 (Guernsey) Order 1988, SI 1988/1851; the Merchant Shipping (Certification of Deck Officers and Marine Engineer Officers) (Guernsey) Order 1988, SI 1988/1991; the Merchant Shipping Act 1988 (Isle of Man) Order 1989, SI 1989/679; the Merchant Shipping Act 1979 (Overseas Territories) Order 1989, SI 1989/2400 (amended by SI 1993/1786); the Merchant Shipping (Distress Signals and Prevention of Collisions) (Guernsey) Order 1989, SI 1989/2410 (amended by SI 1991/763); the Fishing Vessels

(Life-Saving Appliances) (Guernsey) Order 1990, SI 1990/2147; the Fishing Vessels (Safety Provisions) (Guernsey) Order 1990, SI 1990/2148; the Merchant Shipping (Safety Convention) (Guernsey) Order 1990, SI 1990/2150; and the Merchant Shipping Act 1988 (Guernsey) Order 1991, SI 1991/2875.

5 Merchant Shipping Act 1995 s 315(4).

6 Merchant Shipping Act 1995 s 315(3).

7 le without prejudice to the generality of the Merchant Shipping Act 1995 s 315(4) (see the text and note 5): see s 315(5).

8 As to the Secretary of State see PARA 38.

9 As to the meaning of 'registrar' for these purposes see PARA 254 note 11.

10 Merchant Shipping Act 1995 s 315(5).

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B. APPLICATION OF THE MERCHANT SHIPPING ACT 1995 TO CERTAIN DESCRIPTIONS OF SHIPS ETC

18. Non-United Kingdom ships.

The Secretary of State may make regulations¹ specifying any description of non-United Kingdom ships² and directing that such of the provisions of the Merchant Shipping Act 1995 and of instruments thereunder³ as may be specified in the regulations⁴:

- 87 (1) are to extend to non-United Kingdom ships of that description and to masters⁵ and seamen⁶ employed in them⁷; or
- 88 (2) are to so extend in such circumstances as may be so specified, with such modifications, if any, as may be so specified⁸.

Regulations so made may contain such transitional, supplementary and consequential provisions as appear to the Secretary of State to be expedient⁹.

1 As to the Secretary of State see PARA 38; and as to his power to make subordinate legislation, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations, see PARA 41.

2 For these purposes, 'non-United Kingdom ships' means ships which are not registered in the United Kingdom: Merchant Shipping Act 1995 s 307(3). As to the meaning of 'ship' see PARA 229; and as to the meaning of 'registered' see PARA 254 note 2.

3 As to which see PARAS 16, 17.

4 Merchant Shipping Act 1995 s 307(1). As to the regulations so made see note 9.

5 As to the meaning of 'master' see PARA 424.

6 As to the meaning of 'seaman' see PARA 424.

7 Merchant Shipping Act 1995 s 307(1)(a). As to the regulations so made see note 9.

8 Merchant Shipping Act 1995 s 307(1)(b). As to the regulations so made see note 9.

9 Merchant Shipping Act 1995 s 307(2).

In exercise of the power conferred by s 307, the Secretary of State has made the following regulations: the Fishing Vessels (Safety Provisions) (Amendment) Rules 1998, SI 1998/928 (an amending provision); the Merchant Shipping (Crew Accommodation) (Fishing Vessels) (Amendment) Regulations 1998, SI 1998/929 (an amending provision); the Fishing Vessels (Safety of 15-24 Metre Vessels) Regulations 2002, SI 2002/2201 (see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARAS 1022-1023); and the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223 (see PARAS 490, 499).

By virtue of the Interpretation Act 1978 s 17(2)(b), the following regulations take effect under the Merchant Shipping Act 1995 s 307 until superseded by an instrument made thereunder: the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220 (see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1023); the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577 (see PARA 655); the Merchant Shipping Act 1970 (Unregistered Fishing Vessels) Regulations 1991, SI

1991/1365; the Merchant Shipping Act 1970 (Unregistered Ships) Regulations 1991, SI 1991/1366; and the Merchant Shipping Act 1988 (Unregistered Ships) Regulations 1991, SI 1991/1367.

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19. Meaning of 'qualifying foreign ship'.

For the purposes of the Merchant Shipping Act 1995, 'qualifying foreign ship' means any ship¹ other than:

- 89 (1) a British ship²; or
- 90 (2) a ship which is not registered³ under Part II of the Merchant Shipping Act 1995⁴ and which (although not⁵ a British ship) is both:
 - 1
 - 1. (a) wholly owned by any of the following persons⁶: (i) British citizens⁷; (ii) British overseas territories citizens⁸; (iii) British Overseas citizens⁹; (iv) persons who under the British Nationality Act 1981 are British subjects¹⁰; (v) persons who are British Nationals (Overseas) within the meaning of the British Nationality Act 1981¹¹; (vi) persons who are British protected persons within the meaning of the British Nationality Act 1981¹²; or (vi) bodies corporate incorporated in the United Kingdom or in any relevant British possession¹³ and having their principal place of business in the United Kingdom or in any relevant British possession¹⁴; and
 - 2. (b) not registered under the law of a country outside the United Kingdom¹⁵.

1 As to the meaning of 'ship' see PARA 229.

2 Merchant Shipping Act 1995 s 313A(1)(a) (s 313A added by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 20). In the Merchant Shipping Act 1995, unless the context otherwise requires, 'qualifying foreign ship' has the meaning given in s 313A: see s 313(1) (definition added by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 19(2)(c)). 'Foreign', in relation to a ship, means that it is neither a United Kingdom ship nor a small ship, as defined in the Merchant Shipping Act 1995 s 1(2) (see PARA 230), which is a British ship: s 313(1). As to the meanings of 'British ship' and 'United Kingdom ship' see PARA 230; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

3 As to the meaning of 'registered' see PARA 254 note 2.

4 Ie under the Merchant Shipping Act 1995 Pt II (ss 8-23) (see PARA 237 et seq): see s 313A(1)(b) (as added: see note 2).

5 Ie by virtue of the Merchant Shipping Act 1995 s 1(1)(d) (see PARA 230): see s 313A(1)(b) (as added: see note 2).

6 Merchant Shipping Act 1995 s 313A(1)(b)(i) (as added: see note 2). The text refers to persons falling within s 313A(2) (see heads (i) to (vi) in the text): see s 313A(1)(b)(i).

7 Merchant Shipping Act 1995 s 313A(2)(a) (as added: see note 2).

For these purposes, 'British citizen' has the same meaning as in the British Nationality Act 1981 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq): Merchant Shipping Act 1995 s 313(1).

8 Merchant Shipping Act 1995 s 313A(2)(b) (s 313A as added (see note 2); s 313A(2)(b) amended by virtue of the British Overseas Territories Act 2002 s 2(3)).

For these purposes, 'British overseas territories citizen' has the same meaning as in the British Nationality Act 1981 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 44-57): Merchant Shipping Act 1995 s 313(1) (definition added by virtue of the British Overseas Territories Act 2002 s 2(3)).

9 Merchant Shipping Act 1995 s 313A(2)(c) (as added: see note 2).

For these purposes, 'British Overseas citizen' has the same meaning as in the British Nationality Act 1981 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 58 et seq): Merchant Shipping Act 1995 s 313(1).

10 Merchant Shipping Act 1995 s 313A(2)(d) (as added: see note 2).

As to British subjects under the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 9, 66-67.

11 Merchant Shipping Act 1995 s 313A(2)(e) (as added: see note 2).

As to British Nationals (Overseas) within the meaning of the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 63-65.

12 Merchant Shipping Act 1995 s 313A(2)(f) (as added: see note 2).

As to British protected persons within the meaning of the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 10, 72-76.

13 As to the meaning of 'relevant British possession' see PARA 17 note 3.

14 Merchant Shipping Act 1995 s 313A(2)(g) (as added: see note 2). As to a person's place of business see **COMPANIES** vol 14 (2009) PARA 122.

15 Merchant Shipping Act 1995 s 313A(1)(b)(ii) (as added: see note 2).

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20. Government ships.

Subject to any of its other provisions, the Merchant Shipping Act 1995 does not apply to ships¹ belonging to Her Majesty².

However, Her Majesty may by Order in Council make regulations with respect to the manner in which government ships³ may be registered as British ships⁴ under Part II of the Merchant Shipping Act 1995⁵; and the 1995 Act, subject to any exceptions and modifications which may be made by Order in Council, either generally or as respects any special class of government ships, applies to government ships registered in accordance with the Order as if they were registered in accordance with Part II of the 1995 Act⁶.

1 As to the meaning of 'ship' see PARA 229.

2 Merchant Shipping Act 1995 s 308(1).

3 For these purposes, 'government ships' means ships not forming part of Her Majesty's navy which belong to Her Majesty, or are held by any person on behalf of or for the benefit of the Crown (and for that reason cannot be registered under the Merchant Shipping Act 1995 Pt II (ss 8-23) (as to which see PARA 237 et seq)): s 308(4). In the Merchant Shipping Act 1995, unless the context otherwise requires, 'government ship' has the meaning given in s 308: see s 313(1). As to the meaning of 'registered' see PARA 254 note 2.

4 As to the meaning of 'British ship' see PARA 230.

5 Ie under the Merchant Shipping Act 1995 Pt II (see PARA 237 et seq): see s 308(2).

6 Merchant Shipping Act 1995 s 308(2). Any Order in Council under s 308(2) must be laid before Parliament after being made: see s 308(3). As to the making of Orders under the Merchant Shipping Act 1995 generally see PARA 41.

At the date at which this volume states the law, no such Orders in Council had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the following Orders have effect as if made under the Merchant Shipping Act s 308(2), (3): Order in Council dated 9 February 1920 (Registration of Ministry of Agriculture and Fisheries Vessels), SR & O 1920/260; Order in Council dated 14 July 1921 (Registration of Board of Trade Vessels), SR & O 1921/1211 (amended by SI 1978/1533); Order in Council dated 8 December 1924 (Registration of Australian Government Vessels), SR & O 1924/1391; Order in Council dated 10 August 1926 (Registration of Straits Settlements Vessels), SR & O 1926/1036; Order in Council dated 5 November 1929 (Registration of Vessels in the Service of the Indian Government), SR & O 1929/986; Order in Council dated 15 May 1930 (Registration of Northern Ireland Government Vessels), SR & O 1930/336; the Merchant Shipping (Registration of New Zealand Government Ships) Order 1946, SR & O 1946/1086; the Merchant Shipping (Registration of Sierra Leone Government Ships) Order 1951, SI 1951/143; the Merchant Shipping (Registration of Federation of Nigeria Government Ships) Order 1957, SI 1957/861; the Merchant Shipping (Registration of Scottish Fishery Cruisers, Research Ships etc) Order 1960, SI 1960/2217 (amended by SI 1972/2001); the Merchant Shipping (Registration of Ships) (Highlands and Islands Shipping Services) Order 1961, SI 1961/1514; the Registration of Government Ships (British Antarctic Territory) Order 1963, SI 1963/1494; the Merchant Shipping (Registration of Colonial Government Ships) Order 1963, SI 1963/1631 (amended by SI 1965/1867; SI 1967/1903; SI 1978/1628; SI 1985/1200); the Merchant Shipping (Registration of Western Australia Government Ships) Order 1964, SI 1964/270; the Merchant Shipping (Ministry of Technology Ships) Order 1966, SI 1966/269; the Merchant Shipping (Registration of Queensland Government Ships) Order 1968, SI 1968/1092; the Merchant Shipping (Registration of South Australian Government Ships) Order 1971, SI 1971/872; the Merchant Shipping (Ministry of Defence Ships) Order 1989, SI 1989/1991 (amended by SI 1992/1293; SI 1992/1294); the Merchant Shipping (Ministry of Defence Commercially Managed Ships) Order 1992, SI 1992/1293; and the Merchant Shipping (Ministry of Defence Yachts) Order 1992, SI 1992/1294.

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21. Ships chartered by demise to the Crown.

If, for the time being¹:

- 91 (1) a ship² is registered³ in the United Kingdom⁴ and is in the service of a government department⁵ (the 'relevant department') by reason of a charter by demise to the Crown⁶; and
- 92 (2) there is in force⁷ an Order in Council providing for the registration of government ships⁸ in the service of the relevant department⁹,

then the following statutory provisions, namely:

- 93 (a) the provisions of the Order in Council referred to in head (2) above (excluding those relating to registration under the Order)¹⁰; and
- 94 (b) the provisions of the Merchant Shipping Act 1995 as they so apply¹¹,

have the same effect¹² in relation to that ship as they have in relation to a government ship in the service of the relevant department (whether referred to as such or as such a ship registered in pursuance of that Order in Council)¹³.

Part II of the Merchant Shipping Act 1995¹⁴ has effect¹⁵ in relation to such a ship in like manner as if it were not, for the purposes of the 1995 Act, a ship belonging to Her Majesty¹⁶. However, Her Majesty may by Order in Council provide that any such statutory provision¹⁷ specified in the Order¹⁸:

- 95 (i) does not have effect¹⁹ in relation to such a ship²⁰; or
- 96 (ii) is to so have effect in relation to such a ship, but subject to such modifications as are specified in the Order²¹.

Any such Order in Council may make such transitional, incidental or supplementary provision as appears to Her Majesty to be necessary or expedient²².

1 See the Merchant Shipping Act 1995 s 309(1).

2 As to the meaning of 'ship' see PARA 229.

3 As to the meaning of 'registered' see PARA 254 note 2.

4 Merchant Shipping Act 1995 s 309(1)(a)(i). As to the meaning of 'United Kingdom' see PARA 17 note 3.

5 Ie including a Northern Ireland department: see the Merchant Shipping Act 1995 s 309(1)(a)(ii).

6 Merchant Shipping Act 1995 s 309(1)(a)(ii).

7 Ie under the Merchant Shipping Act 1995 s 308(2) (as to which see PARA 20): see s 309(1)(b).

8 As to the meaning of 'government ship' for these purposes see PARA 20 note 3.

9 Merchant Shipping Act 1995 s 309(1)(b).

10 Merchant Shipping Act 1995 s 309(2)(a).

11 Merchant Shipping Act 1995 s 309(2)(b). The text refers to the provisions of the Merchant Shipping Act 1995 as they apply by virtue of s 308(2) (as to which see PARA 20) and the Order in Council mentioned in head (a) in the text: see s 309(2)(b).

12 *le* subject to the Merchant Shipping Act 1995 s 309(3), (4) (as to which see the text and notes 14-21): see s 309(2).

13 Merchant Shipping Act 1995 s 309(2).

In the application of any provision of the Merchant Shipping Act 1995, other than a provision of Pt II (ss 8-23) (as to which see PARA 237 *et seq*), in relation to a ship to which s 309 applies, any reference to the owner of the ship is to be construed as a reference to the relevant department: s 309(5).

14 *le* the Merchant Shipping Act 1995 Pt II (as to which see PARA 237 *et seq*): see s 309(3).

15 *le* subject to the Merchant Shipping Act 1995 s 309(4) (as to which see the text and notes 17-21): see s 309(3).

16 Merchant Shipping Act 1995 s 309(3).

17 *le* any statutory provision falling within the Merchant Shipping Act 1995 s 309(2) (see the text and notes 10-13) or s 309(3) (see the text and notes 14-16): see s 309(4).

18 Merchant Shipping Act 1995 s 309(4).

19 *le* does not have effect in accordance with the Merchant Shipping Act 1995 s 309(2) (see the text and notes 10-13) or s 309(3) (see the text and notes 14-16): see s 309(4)(a).

20 Merchant Shipping Act 1995 s 309(4)(a).

21 Merchant Shipping Act 1995 s 309(4)(b).

22 Merchant Shipping Act 1995 s 309(6).

At the date at which this volume states the law, no Order in Council had been made under s 309 and none has effect as if so made.

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22. Hovercraft.

The enactments and instruments with respect to which provision may be made by Order in Council under the Hovercraft Act 1968¹ include the Merchant Shipping Act 1995 (except the provisions relating to British ships² and to the registration of ships³) and any instrument made thereunder⁴.

The provisions of the Merchant Shipping (High Speed Craft) Regulations 2004⁵ apply to certain hovercraft⁶.

1 Ie under the Hovercraft Act 1968 s 1(1)(h) (prospectively amended) (as to which see PARA 382): see the Merchant Shipping Act 1995 s 310.

2 Ie the Merchant Shipping Act 1995 Pt I (ss 1-7) (as to which see PARAS 230-235): see s 310.

3 Ie the Merchant Shipping Act 1995 Pt II (ss 8-23) (as to which see PARA 237 et seq): see s 310.

4 Merchant Shipping Act 1995 s 310. As to hovercraft see PARA 381 et seq; and as to the regulation of craft to prevent smuggling see PARA 26.

5 Ie the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, which have been made under the Merchant Shipping Act 1995 ss 47, 85, 86 (see PARAS 490, 591 et seq).

6 See PARA 614 et seq.

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23. Provision made for shipping legislation to apply to structures etc.

The Secretary of State¹ may by order²:

- 97 (1) provide for a shipping provision³ to apply (with or without modification) in relation to specified things which are used, navigated or situated wholly or partly in or on water⁴;
- 98 (2) provide for a shipping provision not to apply in relation to specified things which are used, navigated or situated wholly or partly in or on water⁵;
- 99 (3) modify a shipping provision in its application in relation to specified things which are used, navigated or situated wholly or partly in or on water⁶.

1 As to the Secretary of State see PARA 38.

2 Railways and Transport Safety Act 2003 s 112(1). As to the making of such orders see s 112(5), (7). At the orders made under s 112 see note 4. As to the Secretary of State's power to make subordinate legislation see PARA 41.

3 For these purposes, 'shipping provision' means a provision which is made by or by virtue of an Act (including the Railways and Transport Safety Act 2003), and is expressed to apply in relation to ships, vessels or boats (or a specified class or description of ship, vessel or boat): s 112(2). An order under s 112(1) may, in particular, be made in respect of a provision which either confers power to legislate, or creates an offence (s 112(3)); and such an order has effect despite (and may amend) any provision which forms part of or relates to the shipping provision concerned, and defines 'ship', 'vessel' or 'boat' or in any other way limits or determines the application of the shipping provision concerned (s 112(4)).

4 Railways and Transport Safety Act 2003 s 112(1)(a). An order under s 112(1)(a) may provide for the shipping provision not to apply, or to apply with specified modifications, where it would conflict with a specified provision or class of provision made by or by virtue of an enactment: see s 112(6).

In exercise of the power conferred by s 112(1)(a), the Merchant Shipping (Prevention of Pollution) (Drilling Rigs and Other Platforms) Order 2005, SI 2005/74, has been made. Accordingly, the Merchant Shipping Act 1995 s 128(1)(e) (giving effect to certain international agreements which have been ratified by the United Kingdom and which relate to the prevention, reduction or control of pollution of the sea or other waters by matter from ships) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 360) applies in relation to drilling rigs and other platforms which are used, navigated or situated wholly or partly in or on water, as it applies in relation to ships: see the Merchant Shipping (Prevention of Pollution) (Drilling Rigs and Other Platforms) Order 2005, SI 2005/74, art 2.

5 Railways and Transport Safety Act 2003 s 112(1)(b).

6 Railways and Transport Safety Act 2003 s 112(1)(c). An order under s 112(1)(c) may provide for the shipping provision not to apply, or to apply with specified modifications, where it would conflict with a specified provision or class of provision made by or by virtue of an enactment: see s 112(6).

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24. Fishing vessels.

Special provision is made in the Merchant Shipping Act 1995 relating to fishing vessels¹.

¹ See the Merchant Shipping Act 1995 Pt V (ss 109-127) and PARA 425 et seq. As to the meaning of 'fishing vessel' see PARA 230 note 9. As to fishing vessels and fishing generally see **AGRICULTURE AND FISHERIES**.

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(iv) Cognate Law

25. Reports of craft movement for customs control.

For the purposes of the statutory prohibitions and restrictions, including duty, on the import and export of goods and animals¹, reports must be made of every ship arriving at, and clearance must be obtained of every ship departing from, a port appointed for those purposes from or to any place outside the United Kingdom².

Notification of the arrival of pleasure craft in the United Kingdom from a place outside the customs territory of the European Community or from certain other territories must be given to an officer of Revenue and Customs as soon as possible after the arrival of the craft³.

¹ As to such prohibitions generally see **ANIMALS** vol 2 (2008) PARA 868 et seq; **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 999 et seq, 1027 et seq.

² See **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 950 et seq, 999 et seq. As to the meaning of 'United Kingdom' see PARA 17 note 3.

³ See the Pleasure Craft (Arrival and Report) Regulations 1996, SI 1996/1406; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 955.

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26. Regulation of craft to prevent smuggling.

The Commissioners for Her Majesty's Revenue and Customs¹ may make general regulations with respect to small ships² and any such regulations may in particular make provision as to the purposes for which and the limits within which such ships may be used³. Different provision may be made by such regulations for different classes or descriptions of small ships⁴.

The Commissioners may, in respect of any small ship, grant a licence exempting that ship from all or any of the provisions of any regulations so made⁵; and any such licence may be granted for such period, for such purposes and subject to such conditions and restrictions as the Commissioners see fit, and may be revoked at any time by the Commissioners⁶. Any small ship which, except under and in accordance with the terms of a licence so granted, is used contrary to any regulations so made, and any ship granted such a licence which is found not to have that licence on board, is liable to forfeiture⁷.

Every boat belonging to a British ship and every other vessel not exceeding 100 tons register, not being a fishing vessel registered under Part II of the Merchant Shipping Act 1995⁸, and every hovercraft, must be marked in such manner as the Commissioners may direct; and any such boat, vessel or hovercraft which is not so marked is liable to forfeiture⁹.

The Commissioners may make regulations:

- 100 (1) prescribing the procedure for making a report of a ship arriving, or expected to arrive, at a port from any place outside the United Kingdom or carrying any goods brought in that ship from some place outside the United Kingdom and not yet cleared on importation¹⁰;
- 101 (2) prescribing the procedure to be followed by a ship arriving at a port¹¹.

1 As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

2 For these purposes, 'small ships' means: (1) ships not exceeding 100 tons register; and (2) hovercraft of whatever size: Customs and Excise Management Act 1979 s 81(1). 'Ship' and 'vessel' include any boat or other vessel whatsoever (and, to the extent provided in s 2, any hovercraft): s 1(1). 'Tons register' means the tons of a ship's net tonnage as ascertained and registered according to the tonnage regulations of the Merchant Shipping Act 1995 (see PARA 248) or, in the case of a ship which is not registered under that Act, ascertained in like manner as if it were to be so registered: Customs and Excise Management Act 1979 s 1(1) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 53(1), (2)(b)). 'Hovercraft' means a hovercraft within the meaning of the Hovercraft Act 1968 (see PARA 381): Customs and Excise Management Act 1979 s 1(1).

3 Customs and Excise Management Act 1979 s 81(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). At the date at which this volume states the law, no such regulations had been made.

4 Customs and Excise Management Act 1979 s 81(3).

5 Customs and Excise Management Act 1979 s 81(4) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)).

6 Customs and Excise Management Act 1979 s 81(5) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)).

7 Customs and Excise Management Act 1979 s 81(6).

8 In the Merchant Shipping Act 1995 Pt II (ss 8-23) (as to which see PARA 237 et seq): see the Customs and Excise Management Act 1979 s 81(7) (amended by the Merchant Shipping Act 1995 Sch 13 para 53(1), (3); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)).

9 Customs and Excise Management Act 1979 s 81(7) (as amended: see note 8). As to ships' markings see PARA 280 et seq.

10 See the Customs and Excise Management Act 1979 s 35(1) (amended by SI 1992/3095), the Customs and Excise Management Act 1979 s 35(2), (4) (s 35(2) amended by the Immigration, Asylum and Nationality Act 2006 s 35). In exercise of the powers conferred by the Customs and Excise Management Act 1979 s 35, the Commissioners made the Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260 (amended by SI 1986/1819; SI 1992/3095) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 953-954); and the Pleasure Craft (Arrival and Report) Regulations 1996, SI 1996/1406 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 955).

As to the disclosure and sharing of information which is obtained or held in the exercise of specified powers and relates to passengers or freight on a ship, the crew of a ship, or to voyages (or to such other matters in respect of travel or freight as the Secretary of State and the Treasury may jointly specify by order) and which is obtained or held to the extent that the information is likely to be of use for immigration purposes, police purposes, or Revenue and Customs purposes see the Immigration, Asylum and Nationality Act 2006 ss 36-39; and **CUSTOMS AND EXCISE**.

11 Customs and Excise Management Act 1979 s 42(1)(a). In exercise of the powers so conferred, the Commissioners made the Ship's Report, Importation and Exportation by Sea Regulations 1981, SI 1981/1260 (as amended: see note 10) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 953-954); and the Pleasure Craft (Arrival and Report) Regulations 1996, SI 1996/1406 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 955).

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27. Public health precautions.

The masters of ships arriving in, or departing from, the United Kingdom must observe the regulations for preventing danger to health from, or the spread of infection by means of, those ships; and these requirements are enforced by the port health authorities¹.

Certain statutory obligations in relation to the infestation of food apply to all vessels used for the transport or storage of food; and certain other obligations in relation to the destruction of rats and mice apply to any vessel which is not a sea-going ship².

1 See the Public Health (Ships) Regulations 1979, SI 1979/1435 (amended by SI 2001/1149; in relation to England by SI 2007/1446; and in relation to Wales by SI 2007/1901); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 933 et seq.

2 See the Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967 (amended by SI 1956/420; SI 1965/654); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 861 et seq.

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28. Importation of animals by sea.

The importation of animals by any specified vessel may be prohibited by order; and orders may be made securing for animals carried by sea proper food, water and ventilation and protection from unnecessary suffering¹.

1 See **ANIMALS** vol 2 (2008) PARA 868 et seq.

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29. Births and deaths at sea.

The Secretary of State may make regulations under the Merchant Shipping Act 1995 in relation to births and deaths in ships¹; and such regulations may require the master of any United Kingdom ship to make a return to a superintendent or proper officer of the birth or death of any person occurring in the ship and the death of any person employed in the ship, wherever occurring outside the United Kingdom, and to notify any such death to such person, if any, as the deceased may have named to him as his next of kin².

The Registrar General must preserve any returns made in the marine register book³.

Similar duties are imposed in relation to births and deaths on board Her Majesty's ships⁴ and on hovercraft⁵.

1 See the Merchant Shipping Act 1995 s 108; and PARA 654. As to the regulations so made see the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577; and PARA 655.

As to the Secretary of State see PARA 38; and as to his power to make subordinate legislation under the Merchant Shipping Act 1995 see PARA 41.

2 See note 1.

3 See **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARA 578.

4 See **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARA 584.

5 See PARA 418 et seq.

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30. Restriction of seashore works detrimental to navigation.

With certain exceptions, the construction, alteration or improvement of any works on, under or over, or the deposit of any object or materials on, the seashore below ordinary high water mark, or the removal of any object or materials from the seashore below ordinary low water mark, without the consent of the Secretary of State is an offence, and the offender must take the necessary remedial measures or bear the expense of such measures¹.

¹ See the Coast Protection Act 1949 Pt II (ss 34-36A); and **WATER AND WATERWAYS** vol 101 (2009) PARA 533 et seq.

UPDATE

30 Restriction of seashore works detrimental to navigation

TEXT AND NOTES--Coast Protection Act 1949 Pt 2 repealed: Marine and Coastal Access Act 2009 Sch 8 para 1(2), Sch 22 Pt 2 (not yet in force).

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31. Control of loading, unloading, coaling etc of ships in docks, harbours, canals etc.

Certain provisions of the Factories Act 1961¹ apply to the process of loading, unloading or coaling of any ship in any dock, harbour or canal, and to all machinery or plant (including any gangway or ladder used by any person employed to load or unload or coal a ship) used in those processes as if the processes were carried on in a factory and the machinery or plant were machinery or plant in a factory, and the person who carries on those processes were the occupier of a factory².

1 As to which generally see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 306 et seq.

2 See the Factories Act 1961 s 125; and **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 312 et seq.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/1. INTRODUCTION/(2) CONVENTIONS AND LEGISLATION/(iv) Cognate Law/32. Control of work carried out in relation to ships or vessels.

32. Control of work carried out in relation to ships or vessels.

Many of the provisions of the Factories Act 1961¹ apply to certain work carried out in a harbour or wet dock or in a ship but not to such work done either by the master or crew or during a trial run².

Detailed requirements as to safety and health in carrying out specified operations in relation to ships or vessels (including construction, reconstruction, repairing, refitting, painting and finishing, the scaling, scurfing or cleaning of boilers etc) are imposed by regulations which are generally in addition to and not in substitution for the requirements of the Factories Act 1961³.

1 As to which generally see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 306 et seq.

2 See the Factories Act 1961 s 126; and **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 315 et seq.

3 See eg the Shipbuilding and Ship-repairing Regulations 1960, SI 1960/1932; and **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARA 716 et seq.

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33. Retail of alcohol on vessels etc.

For the purposes of the Licensing Act 2003, an activity is not a licensable activity¹ if it is carried on (inter alia): (1) aboard a hovercraft engaged on a journey; (2) aboard a vessel engaged on an international journey; (3) at an approved wharf at a designated port or hoverport².

1 As to licensable activities for the purposes of the Licensing Act 2003 see **INTOXICATING LIQUOR** vol 26 (2004 Reissue) PARA 109.

2 See the Licensing Act 2003 s 173; and **INTOXICATING LIQUOR** vol 26 (2004 Reissue) PARA 109.

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34. Ships as goods; marine insurance.

Ships are personal chattels and as such are goods within the meaning of the law relating to the sale of goods¹.

Ships are also goods for the purposes of the statutory controls over mergers² and market investigations³ and for the purposes of enforcing certain consumer legislation⁴.

Ships, goods, freight, profits and every lawful marine adventure may be the subject of a contract of marine insurance against maritime perils, the law as to such insurance being codified in the Marine Insurance Act 1906⁵.

1 See **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) para 30.

2 See the Enterprise Act 2002 Pt 3 (ss 22-130); and **COMPETITION**.

3 See the Enterprise Act 2002 Pt 4 (ss 131-184); and **COMPETITION**.

4 See the Enterprise Act 2002 Pt 8 (ss 210-236); and **COMPETITION**.

5 See **INSURANCE** vol 25 (2003 Reissue) paras 14, 215 et seq. The rules of the common law including the law merchant, save in so far as they are inconsistent with the express provisions of the Marine Insurance Act 1906, continue to apply to contracts of marine insurance: see s 91(2); and **INSURANCE** vol 25 (2003 Reissue) para 14.

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35. Piracy.

All states who are party to the United Nations Convention on the Law of the Sea 1982¹ must cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state². The acts which constitute piracy in international law, and their punishment, are considered elsewhere in this work³.

1 See the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941) (the 'United Nations Convention on the Law of the Sea 1982') (as to which see PARA 10).

2 See the United Nations Convention on the Law of the Sea 1982 arts 100, 101-103 (which are set out in the Merchant Shipping and Maritime Security Act 1997 s 26(1), Sch 5); and PARA 1249.

3 See **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 155 et seq.

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36. Powers relating to the prevention of terrorism etc.

The Terrorism Act 2000 confers powers to stop, question and detain persons arriving in or leaving Great Britain¹ or Northern Ireland by ship², to search ships³ and to require the owners or agents of ships employed to carry passengers for reward and coming to Great Britain from the Republic of Ireland, Northern Ireland or any of the Islands (or going from Great Britain to any other of those places) to arrange for the ships to call at designated ports for the purpose of disembarking or embarking passengers⁴.

The Terrorism Act 2000 also confers powers to require the provision of passenger information⁵.

1 As to the meaning of 'Great Britain' see PARA 17 note 3.

2 See the Terrorism Act 2000 Sch 7; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 430.

3 See the Terrorism Act 2000 Sch 7; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 432.

4 See the Terrorism Act 2000 Sch 7; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 434-438.

5 See the Terrorism Act 2000 Sch 7; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 437.

As to the disclosure and sharing of information which is obtained or held in the exercise of specified powers and relates to passengers or freight on a ship, the crew of a ship, or to voyages (or to such other matters in respect of travel or freight as the Secretary of State and the Treasury may jointly specify by order) and which is obtained or held to the extent that the information is likely to be of use for immigration purposes, police purposes, or Revenue and Customs purposes see the Immigration, Asylum and Nationality Act 2006 ss 36-39; and **CUSTOMS AND EXCISE**.

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37. Recreational craft.

Recreational craft must satisfy the essential safety requirements which are applicable to them and must meet certain other safety requirements before they are put on the market, including being put into service¹.

¹ See the Recreational Craft Regulations 2004, SI 2004/1464 (amended by SI 2004/3201), implementing EC Council Directive 94/25 (OJ L164, 30.6.94, p 15) (amended by EC Council Directive 2003/44 (OJ L214, 26.8.2003, p 18)) (as to which see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 393); and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 865. As to exclusions see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 866.

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(3) ADMINISTRATION

(i) The Secretary of State and the Welsh Authorities

38. The Secretary of State and the Welsh Authorities.

Despite the fact that older statutes refer to ministers (occasionally, to specific ministers) or to government departments, the office of Secretary of State is a unified office, and in law each Secretary of State is capable of performing the duties of all or any of the departments¹. Accordingly, many modern statutes refer simply to the 'Secretary of State' without reference to a particular department or ministry². However, at the date at which this volume states the law, and unless the context otherwise requires, the functions of the Secretary of State under the Merchant Shipping Act 1995 are performed by the Secretary of State for Transport³.

Many statutory functions vested in a Secretary of State or a Minister of the Crown are transferred so as to be exercisable in relation to Wales⁴ by the Welsh Ministers⁵. However, for the purposes of this title, the functions so transferred⁶ are limited to functions under the Protection of Wrecks Act 1973⁷. Nor does the legislative competence of the National Assembly for Wales extend to shipping, apart from: (1) financial assistance for shipping services to, from or within Wales⁸; and (2) regulation of the use of vessels carrying animals for the purposes of protecting human, animal, fish or plant health, animal welfare or the environment⁹.

1 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355.

2 In any enactment, 'Secretary of State' means one of Her Majesty's Principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1; and **STATUTES** vol 44(1) (Reissue) PARA 1382. As to Her Majesty's Principal Secretaries of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355.

3 As to the Department of Transport see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 509-511. As to the functions of the Secretary of State under the Merchant Shipping Act 1995 see PARA 39 et seq. As to the Secretary of State in relation to ports and harbours see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 603.

The Maritime and Coastguard Agency (MCA), which is an executive agency of the Department for Transport, is responsible throughout the United Kingdom for implementing HM government's maritime safety policy: see PARA 56.

4 As to the meaning of 'Wales' see PARA 17 note 2.

5 Functions were previously transferred to the National Assembly for Wales by Order in Council under the Government of Wales Act 1998 s 22 (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1) or, in the case of functions conferred under enactments subsequent to the Government of Wales Act 1998, by virtue of particular provision made under those enactments: see the Government of Wales Act 2006 s 162(1), Sch 11 para 30; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

Further transfers of ministerial functions to the Welsh Ministers may be effected by Order in Council pursuant to s 58, Sch 3 paras 1-8. As to the exercise of transferred functions and the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see Sch 11 paras 33-35 (in the case of functions transferred to the Assembly by Order in Council under the Government of Wales Act 1998 s 22) or the Government of Wales Act 2006 Sch 3 para 9 (in the case of functions transferred to the Welsh Ministers by Order in Council under s 58); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6 le by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

7 le the Protection of Wrecks Act 1973 (see PARA 1012; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1064), except s 2 (see PARA 1012): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

Ministerial powers and functions under the legislation relating to fisheries are exercised in England by the Secretary of State or, in Wales, by the Welsh Ministers, with certain functions being exercised jointly by the Secretary of State and the Welsh Ministers: see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 846.

8 See the Government of Wales Act 2006 s 108(3)-(5), Sch 7 para 10 (amended by SI 2007/2143); and PARA 65.

9 See the Government of Wales Act 2006 s 108(3)-(5), Sch 7 para 10 (as amended: see note 8); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

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39. General functions of the Secretary of State under the Merchant Shipping Act 1995.

Under the Merchant Shipping Act 1995, the Secretary of State¹ continues to have the general superintendence of all matters relating to merchant shipping and seamen² and is authorised to carry into execution the provisions of that Act and of all Acts relating to merchant shipping and seamen for the time being in force, except where otherwise provided or so far as relating to revenue³.

Under the Merchant Shipping Act 1995, the Secretary of State continues also to have the functions of taking, or co-ordinating, measures to prevent, reduce and minimise the effect of, marine pollution⁴.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'seaman' see PARA 424.

3 Merchant Shipping Act 1995 s 292(1). The Secretary of State may take any legal proceedings under the Merchant Shipping Act 1995 in the name of any of his officers: s 292(2).

4 See the Merchant Shipping Act 1995 s 293; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 58.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/1. INTRODUCTION/(3) ADMINISTRATION/(i) The Secretary of State and the Welsh Authorities/40. Secretary of State's general power under the Merchant Shipping Act 1995 to dispense.

40. Secretary of State's general power under the Merchant Shipping Act 1995 to dispense.

The Secretary of State¹ may, if he thinks fit, and upon such conditions, if any, as he thinks fit to impose, exempt any ship² from any specified requirement of, or prescribed under, the Merchant Shipping Act 1995³, or dispense with the observance of any such requirement in the case of any ship, if he is satisfied, as respects that requirement, of the following matters⁴, namely:

- 102 (1) that the requirement has been substantially complied with in the case of that ship or that compliance with it is unnecessary in the circumstances⁵; and
- 103 (2) that the action taken or provision made as respects the subject matter of the requirement in the case of the ship is as effective as, or more effective than, actual compliance with the requirement⁶.

The Secretary of State must annually lay before both Houses of Parliament a special report stating: (a) the cases in which he has exercised his powers to dispense⁷ during the preceding year⁸; and (b) the grounds upon which he has acted in each case⁹.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'ship' see PARA 229.

3 Ie other than the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-151) (oil pollution) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 425 et seq): see s 294(1).

4 Merchant Shipping Act 1995 s 294(1).

5 Merchant Shipping Act 1995 s 294(2)(a).

6 Merchant Shipping Act 1995 s 294(2)(b).

7 Ie under the Merchant Shipping Act 1995 s 294 (see the text and notes 1-6): see s 294(3)(a).

8 Merchant Shipping Act 1995 s 294(3)(a).

9 Merchant Shipping Act 1995 s 294(3)(b).

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41. Secretary of State's power to make regulations, orders, rules and directions under the Merchant Shipping Act 1995.

Provision is made in relation to the Secretary of State's power to make regulations, orders, rules and directions under the Merchant Shipping Act 1995¹.

The Secretary of State may, if he thinks fit, appoint committees for the purpose of advising him when considering the making or alteration of any regulations, rules or scales for the purposes² of the Merchant Shipping Act 1995³. Committees may be so appointed to advise the Secretary of State, particularly as regards any special regulations, rules or scales or generally as regards any class or classes of regulations, rules or scales which the Secretary of State may assign to them⁴.

1 See the Merchant Shipping Act 1995 s 306(1)-(3) (amended by the Merchant Shipping and Maritime Security Act 1997 s 29(1), Sch 6 para 18(1)-(4); and SI 1998/2241).

Before making the following regulations or rules, namely:

- 12 (1) regulations under the Merchant Shipping Act 1995 Pt III (ss 24-84) (masters and seamen) (see PARA 423 et seq) or s 108 (returns of births and deaths in ships) (see PARA 654) or s 130A (waste reception facilities at harbours) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 421); or

- 13 (2) rules under Pt V Ch II (ss 121-127) (fishing vessels (safety)) (see PARA 604 et seq),

the Secretary of State must consult with organisations in the United Kingdom appearing to him representative of persons who will be affected by the regulations or rules: s 306(4) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 18(1), (5)). As to the meaning of 'United Kingdom' see PARA 17 note 3.

Any direction, notice, order or authorisation under the Merchant Shipping Act 1995 given or made by the Secretary of State must be in writing (s 306(5)); and any power to give a direction includes power to vary or revoke the direction by a subsequent direction (s 306(6)).

2 Ie other than for the purposes of the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-151) (oil pollution) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 425 et seq): see s 301(1).

3 Merchant Shipping Act 1995 s 301(1). A committee so appointed must consist of persons representing the interests principally affected or having special knowledge of the subject matter (s 301(2)); and the Secretary of State must pay to the members of any such committee such travelling and other allowances as the Secretary of State determines with the consent of the Treasury (s 301(3)). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

4 Merchant Shipping Act 1995 s 301(4).

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42. Secretary of State's power to prepare and approve forms required under the Merchant Shipping Act 1995.

The Secretary of State¹ may prepare and approve forms for any book, instrument or paper required under the Merchant Shipping Act 1995, and may alter such forms as he thinks fit².

The Secretary of State must cause every such form to be marked with the distinguishing mark of his department and, before finally issuing any form or making any alteration in a form, must cause public notice thereof to be given in such manner as he thinks requisite in order to avoid inconvenience³.

The Secretary of State must cause such forms to be supplied at offices of Revenue and Customs and at offices of the Department of Transport, free of charge or at such reasonable prices as the Secretary of State may fix, or he may license any persons to print and sell the forms⁴.

Every such book, instrument or paper must be made in the form, if any, approved by the Secretary of State, or as near as circumstances permit; and, unless so made, is not admissible in evidence in any civil proceedings on the part of the owner or master⁵ of any ship⁶.

Every such book, instrument or paper, if made in a form purporting to be the proper form and to be marked with the distinguishing mark⁷, is deemed to be in the form required by the Merchant Shipping Act 1995, unless the contrary is proved⁸.

If any person prints, sells or uses any document purporting to be a form approved by the Secretary of State knowing that the document is not the form approved for the time being or that the document has not been prepared or issued by the Secretary of State, that person is liable on summary conviction to a fine not exceeding level 2 on the standard scale⁹.

1 As to the Secretary of State see PARA 38.

2 Merchant Shipping Act 1995 s 300(1).

The provisions of s 300(1)-(5) do not apply where special provision is made by the Merchant Shipping Act 1995: s 300(6).

3 Merchant Shipping Act 1995 s 300(2). See note 2.

4 Merchant Shipping Act 1995 s 300(3) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). See note 2.

5 As to the meaning of 'master' see PARA 424.

6 Merchant Shipping Act 1995 s 300(4). See note 2. As to the meaning of 'ship' see PARA 229.

7 I.e. marked in accordance with the Merchant Shipping Act 1995 s 300(2) (see the text and note 3): see s 300(5).

8 Merchant Shipping Act 1995 s 300(5). See note 2.

9 See the Merchant Shipping Act 1995 s 300(7); and PARA 1245.

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43. Secretary of State's power to require returns etc from officers under the Merchant Shipping Act 1995.

All superintendents¹ must make and send to the Secretary of State² such returns or reports on any matter relating to British merchant shipping³ or seamen⁴ as he may require⁵. All superintendents must also, when required by the Secretary of State, produce to him or to his officers all official log books⁶ and other documents which are delivered to them under the Merchant Shipping Act 1995⁷.

All consular officers⁸ abroad and all officers of revenue and customs abroad must make and send to the Secretary of State such returns or reports on any matter relating to British merchant shipping or seamen as he may require⁹.

All surveyors of ships¹⁰ must make such returns to the Secretary of State as he may require with respect to:

- 104 (1) the build, dimensions, draught, burden, speed and room for fuel of ships surveyed by them¹¹; and
- 105 (2) the nature and particulars of machinery and equipment of such ships¹².

The owner, master¹³ and engineer of any ship being surveyed must, when required to do so, give to the surveyors all such information and assistance within his power as the surveyors require for the purpose of such returns¹⁴.

1 le all mercantile marine superintendents appointed under the Merchant Shipping Act 1995 s 296 (see PARA 60): see s 313(1).

2 As to the Secretary of State see PARA 38.

3 As British merchant shipping see PARA 229 et seq.

4 As to the meaning of 'seaman' see PARA 424.

5 Merchant Shipping Act 1995 s 299(1).

6 As to official log books see PARAS 531-533.

7 Merchant Shipping Act 1995 s 299(3).

The following duties also are imposed on all superintendents, and on all officers of revenue and customs (see the text and notes 8-9), as respects all documents which are delivered or transmitted to or retained by them in pursuance of the Merchant Shipping Act 1995 (s 298(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7))), namely:

- 14 (1) they must take charge of the documents and keep them for such time, if any, as may be necessary for the purpose of settling any business arising at the place where the documents come into their hands, or for any other proper purpose (Merchant Shipping Act 1995 s 298(2)); and
- 15 (2) they must, if required, produce them for any of those purposes, and must then transmit them to the Registrar General of Shipping and Seamen (s 298(3)), who must retain documents transmitted to him in this way for such period as the Secretary of State may direct (s 298(4) (substituted by the Merchant Shipping and Maritime Security Act 1997 s 23)).

As from a day to be appointed by the Secretary of State by order under the Merchant Shipping Act 1995 s 314(3), Sch 14 para 6(1), s 298 ceases to have effect: see Sch 14 para 6(1), (2). However, at the date at which this volume states the law, no such day had been appointed. As to the Secretary of State's power to give directions under the Merchant Shipping Act 1995 see PARA 41. As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

Documents transmitted to the Registrar General of Shipping and Seamen under s 298 (prospectively repealed) are admissible in evidence and, when in the custody of the Registrar General of Shipping and Seamen, are open to public inspection: see s 287(1)(e); and PARA 1109. As to the Registrar General of Shipping and Seamen see PARA 61.

8 As to British consular officers see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 30.

9 Merchant Shipping Act 1995 s 299(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)).

As to the duties which are imposed on all officers of revenue and customs as respects all documents which are delivered or transmitted to or retained by them in pursuance of the Merchant Shipping Act 1995 see note 7.

10 As to the meaning of 'surveyor of ships' see PARA 46 note 13; and as to the meaning of 'ship' see PARA 229.

11 Merchant Shipping Act 1995 s 299(4)(a).

12 Merchant Shipping Act 1995 s 299(4)(b).

13 As to the meaning of 'master' see PARA 424.

14 Merchant Shipping Act 1995 s 299(5). If the owner, master or engineer, on being so required to give any information or assistance, fails without reasonable excuse to give the information or assistance, he is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see s 299(6); and PARA 1242.

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44. Secretary of State's power to require statistical returns in respect of carriage of goods and passengers by sea.

The Secretary of State¹ may require by notice in writing any person carrying on business or trade in the maritime transport sector² to furnish, in such form and manner and within such time as may be specified, such periodical or other returns about cargo, vessel and passenger movement information (including information about the vessel and additional particulars in relation to the transport of containers or ro-ro units)³ in relation to the carriage of goods and passengers by sea going vessels as may be specified⁴.

The failure to furnish returns as so required, or to furnish a false return, is an offence⁵.

1 As to the Secretary of State see PARA 38.

2 For these purposes, 'person carrying on business or trade in the maritime transport sector' includes any maritime transport operator and any person who acts as an agent on behalf of a maritime transport operator in relation to a contract for the transport of goods or persons by sea concluded with a shipper or a passenger; and 'maritime transport operator' means any person by whom or on behalf of whom a contract for the transport of goods or persons by sea is concluded with a shipper or a passenger: Statistical Returns (Carriage of Goods and Passengers by Sea) Regulations 1997, SI 1997/2330, reg 2(1).

3 I.e. such periodical or other returns about such of the matters set out in the Statistical Returns (Carriage of Goods and Passengers by Sea) Regulations 1997, SI 1997/2330, reg 3, Schedule: see reg 3.

4 Statistical Returns (Carriage of Goods and Passengers by Sea) Regulations 1997, SI 1997/2330, reg 3. The Secretary of State may require a harbour authority also to furnish returns under reg 3: see **PORTS AND HARBOURS**.

The Statistical Returns (Carriage of Goods and Passengers by Sea) Regulations 1997, SI 1997/2330, implement EC Council Directive 95/64 of 8 December 1995 (OJ L320, 30.12.1995, p 25) on statistical returns in respect of carriage of goods and passengers by sea (amended by EC Commission Decision 98/385 of 13 May 1998 (OJ L174, 18.06.1998, p 1); EC Commission Decision 2000/363 of 28 April 2000 (OJ L132, 05.06.2000, p 1); EC Regulation 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ L284, 31.10.2003, p 1); EC Commission Decision 2005/366 of 4 March 2005 (OJ L123, 17.05.2005, p 1); and EC Commission Regulation 1304/2007 of 7 November 2007 (OJ L290, 08.11.2007, p 14)).

As to the Secretary of State's power to direct returns as to passengers to be furnished to him by masters of ships see PARA 653.

5 See the Statistical Returns (Carriage of Goods and Passengers by Sea) Regulations 1997, SI 1997/2330, reg 4; and PARA 1183.

UPDATE

44 Secretary of State's power to require statistical returns in respect of carriage of goods and passengers by sea

NOTE 1--Decision 98/385 replaced: EC Commission Decision 2008/861 (OJ L306, 15.11.2008, p 66).

NOTE 4--Directive 95/64 replaced: European Parliament and EC Council Directive 2009/42 (OJ L141, 6.6.2009, p 29).

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(ii) The Admiralty Registrar

45. The Admiralty Registrar and Registry.

In general, the Admiralty Registrar¹ deals with all applications in Admiralty claims² on matters which elsewhere in the Queen's Bench Division would be dealt with on application by a master³. However, the Admiralty Court⁴ may refer to the Admiralty Registrar any question or issue for his determination (a 'reference') at any stage in a claim⁵.

All Admiralty claims must be issued in the Admiralty and Commercial Registry⁶, which is the administrative office for the Admiralty Court and the Commercial Court⁷.

1 As to the Admiralty Registrar see PARA 140.

2 As to the procedure in Admiralty claims generally see PARA 91 et seq.

3 See PARA 141 et seq. Accordingly, the Admiralty Registrar may refer to a judge any matter which he thinks should properly be decided by a judge: see *Practice Direction--Applications* PD 23A para 1.

4 As to the Admiralty jurisdiction of the High Court see PARA 79 et seq.

5 See *Practice Direction--Admiralty Claims* PD 61 para 13; and PARA 143 et seq. However, the court will not order a reference if it can satisfactorily dispose of the question: see PARA 143.

6 See *Practice Direction--Commercial Court* PD 58 para 2 (which is applied by *Practice Direction--Admiralty Claims* PD 61 para 1); and PARA 143 et seq.

7 See the Admiralty and Commercial Courts Guide para A2.1. As to the Admiralty and Commercial Courts Guide see PARA 91 note 3.

UPDATE

45 The Admiralty Registrar and Registry

NOTE 7--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para A2.1.

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(iii) Enforcement Officers and their Powers

A. ENFORCEMENT OFFICERS

46. Appointment of inspectors and surveyors.

The Secretary of State¹ may, if he thinks fit, appoint any person as an inspector² to report to him:

- 106 (1) upon the nature and causes of any accident³ or damage which any ship⁴ has or is alleged to have sustained or caused⁵;
- 107 (2) whether any requirements, restrictions or prohibitions imposed by or under the Merchant Shipping Act 1995⁶ have been complied with or, as the case may be, contravened⁷;
- 108 (3) whether the hull and machinery of a ship⁸ are sufficient and in good condition⁹;
- 109 (4) what measures have been taken to prevent the escape of oil¹⁰ or mixtures containing oil¹¹.

The Secretary of State may, at such ports¹² as he thinks fit, appoint persons to be surveyors of ships for the purposes of the Merchant Shipping Act 1995 and he may remove any person so appointed¹³. A surveyor of ships may be appointed either as a ship surveyor or as an engineer surveyor or as both¹⁴; and surveyors of ships may be appointed either generally or for any particular case or purpose¹⁵. The Secretary of State may also appoint a surveyor general of ships for the United Kingdom¹⁶ and such other officers in connection with the survey of ships and other matters incidental thereto as he thinks fit¹⁷.

The Secretary of State may also appoint persons to be inspectors for the purposes of the statutory provisions relating to improvement notices and prohibition notices¹⁸.

1 As to the Secretary of State see PARA 38.

2 In the Merchant Shipping Act 1995, unless the context otherwise requires, 'departmental inspector' means an inspector appointed under s 256(1): ss 256(9)(a), 313(1). As to the powers of an inspector so appointed see PARA 46; and as to the payment of the salary etc of an inspector see PARA 64. Every inspector appointed under s 256(1) is to be treated as appointed under s 256(6) (see the text and note 18): s 256(7) (amended by the Merchant Shipping and Marine Safety Act 1997 s 29(1), Sch 6 para 15).

In relation to a vessel, an inspector appointed under the Merchant Shipping Act 1995 s 256 is an 'authorised person' for the purposes of the Licensing Act 2003 Pt 3 (ss 11-59) (see s 13(2); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 54) (premises licences) and Pt 4 (ss 60-97) (see s 69(2); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 89) (clubs).

3 As to the power to make provision by safety regulations with respect to the steps to be taken to prevent any collision involving a ship and in consequence of any collision involving a ship see PARA 591; and as to accident investigations and inquiries see PARA 844 et seq.

4 As to the meaning of 'ship' see PARA 229.

5 Merchant Shipping Act 1995 s 256(1)(a).

6 For these purposes, the reference to requirements, restrictions or prohibitions under the Merchant Shipping Act 1995 includes any such requirements, restrictions or prohibitions constituting the terms of any approval, licence, consent or exemption in any document issued thereunder: Merchant Shipping Act 1995 s 256(9).

7 Merchant Shipping Act 1995 s 256(1)(b). See note 13.

8 As to the power to make provision by safety regulations with respect to ships and their machinery and equipment see PARA 591.

9 Merchant Shipping Act 1995 s 256(1)(c).

10 As to the prevention of oil pollution generally see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 348 et seq.

11 Merchant Shipping Act 1995 s 256(1)(d). See note 13.

12 In the Merchant Shipping Act 1995, unless the context otherwise requires, 'port' includes place: s 313(1).

13 Merchant Shipping Act 1995 s 256(2). In the Merchant Shipping Act 1995, unless the context otherwise requires, 'surveyor of ships' means a surveyor appointed under s 256(2): ss 256(9)(b), 313(1). Every surveyor of ships is to be treated as a person appointed generally under s 256(1) (see the text and notes 1-11) to report to the Secretary of State in every kind of case falling within s 256(1)(b) (see head (2) in the text) and s 256(1)(d) (see head (4) in the text) in relation to Pt VI Ch II (ss 131-151) (oil pollution) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 425 et seq): s 256(8). As to returns required to be made by surveyors and the giving of information to surveyors see PARA 43; and as to the salaries etc of surveyors of ships see PARA 64.

In relation to a vessel, a surveyor of ships appointed under the Merchant Shipping Act 1995 s 256 is an 'authorised person' for the purposes of the Licensing Act 2003 Pt 3 (ss 11-59) (see s 13(2); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 54) (premises licences) and Pt 4 (ss 60-97) (see s 69(2); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 89) (clubs).

14 Merchant Shipping Act 1995 s 256(3).

15 Merchant Shipping Act 1995 s 256(4).

16 As to the meaning of 'United Kingdom' see PARA 17 note 3.

17 Merchant Shipping Act 1995 s 256(5).

18 Merchant Shipping Act 1995 s 256(6). The text refers to the statutory provisions contained in ss 261-266 (see PARA 50 et seq): see s 256(6).

Every inspector appointed under s 256(1) (see the text and notes 1-11) is to be treated as appointed under s 256(6): see s 256(7) (as amended: see note 2).

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B. POWERS OF INSPECTION ETC

47. Power to require production of ship's documents.

Powers are conferred by the Merchant Shipping Act 1995¹:

- 110 (1) to require the owner, master² or any of the crew to produce any official log books³ or other documents relating to the crew or any member of the crew in their possession or control⁴;
- 111 (2) to require the master to produce a list of all persons on board his ship⁵, and take copies of or extracts from the official log books or other such documents⁶;
- 112 (3) to muster the crew⁷; and
- 113 (4) to require the master to appear and give any explanation concerning the ship or her crew or the official log books or documents produced or required to be produced⁸.

The powers so conferred⁹ are conferred in relation to United Kingdom ships¹⁰ and are available to any of the following officers, namely:

- 114 (a) any Departmental officer¹¹;
- 115 (b) any commissioned naval officer¹²;
- 116 (c) any British consular officer¹³;
- 117 (d) the Registrar General of Shipping and Seamen¹⁴ or any person discharging his functions¹⁵;
- 118 (e) any officer of Revenue and Customs¹⁶;
- 119 (f) any superintendent¹⁷,

whenever the officer has reason to suspect that the Merchant Shipping Act 1995 or any law for the time being in force relating to merchant seamen or navigation is not complied with¹⁸.

If any person, on being duly required¹⁹ by an officer to produce a log book or any document, fails without reasonable excuse to produce the log book or document, he is liable on summary conviction to a fine not exceeding level 3 on the standard scale²⁰.

If any person, on being duly required²¹ by any officer: (i) to produce a log book or document, refuses to allow the log book or document to be inspected or copied²²; (ii) to muster the crew, impedes the muster²³; or (iii) to give any explanation, refuses or neglects to give the explanation or knowingly misleads or deceives the officer²⁴, he is liable on summary conviction to a fine not exceeding level 5 on the standard scale²⁵.

1 le conferred by the Merchant Shipping Act 1995 s 257: see s 257(2).

2 As to the meaning of 'master' see PARA 424.

3 As to official log books see PARAS 531-533.

4 Merchant Shipping Act 1995 s 257(2)(a).

5 As to the meaning of 'ship' see PARA 229.

6 Merchant Shipping Act 1995 s 257(2)(b).

7 Merchant Shipping Act 1995 s 257(2)(c).

8 Merchant Shipping Act 1995 s 257(2)(d).

9 le the powers conferred by the Merchant Shipping Act 1995 s 257: see s 257(1).

10 As to the meaning of 'United Kingdom ship' see PARA 230.

11 Merchant Shipping Act 1995 s 257(1)(a). In the Merchant Shipping Act 1995, unless the context otherwise requires, 'departmental officer' means any officer of the Secretary of State discharging functions of his for the purposes of the Merchant Shipping Act 1995: ss 256(9)(c), 313(1). As to the Secretary of State see PARA 38.

12 Merchant Shipping Act 1995 s 257(1)(b). In the Merchant Shipping Act 1995, unless the context otherwise requires, 'commissioned naval officer' means a commissioned officer of Her Majesty's Navy on full pay: s 313(1). As to the issue of commissions in Her Majesty's Navy see **ARMED FORCES** vol 2(2) (Reissue) PARA 153.

13 Merchant Shipping Act 1995 s 257(1)(c). As to British consular officers see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 30.

14 As to the Registrar General of Shipping and Seamen see PARA 61.

15 Merchant Shipping Act 1995 s 257(1)(d).

16 Merchant Shipping Act 1995 s 257(1)(e) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

17 Merchant Shipping Act 1995 s 257(1)(f). As to the meaning of 'superintendent' see PARA 60 note 1.

18 Merchant Shipping Act 1995 s 257(1).

The powers conferred by s 257 are exercisable by British sea-fisheries officers in relation to fishing boats for the purpose of enforcing the collision regulations made under s 85 (see PARA 715 et seq): see the Sea Fisheries Act 1968 s 8(6); and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1004.

19 le duly required under the Merchant Shipping Act 1995 s 257: see s 257(3); and PARA 1238.

20 See the Merchant Shipping Act 1995 s 257(3); and PARA 1238.

21 le duly required under the Merchant Shipping Act 1995 s 257: see s 257(4); and PARA 1238.

22 See the Merchant Shipping Act 1995 s 257(4)(a); and PARA 1238.

23 See the Merchant Shipping Act 1995 s 257(4)(b); and PARA 1238.

24 See the Merchant Shipping Act 1995 s 257(4)(c); and PARA 1238.

25 See the Merchant Shipping Act 1995 s 257(4); and PARA 1238.

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48. Powers to inspect ships and their equipment etc.

For the purpose of seeing that the provisions of the Merchant Shipping Act 1995 (other than certain provisions relating to oil pollution¹) and of regulations and rules so made² are complied with, or that the terms of any approval, licence, consent, direction or exemption given by virtue of such regulations are duly complied with, the following persons, namely³:

- 120 (1) a surveyor of ships⁴;
- 121 (2) a superintendent⁵;
- 122 (3) any person appointed by the Secretary of State⁶, either generally or in a particular case, to exercise the powers⁷ to inspect ships and their equipment etc⁸,

may at all reasonable times go on board a ship in the United Kingdom⁹ or in United Kingdom waters¹⁰ and inspect the ship and its equipment or any part thereof, any articles on board and any document carried in the ship in pursuance of the Merchant Shipping Act 1995 or in pursuance of regulations or rules made thereunder¹¹.

A person exercising these powers¹² to inspect ships and their equipment etc must not unnecessarily detain or delay a ship but may, if he considers it necessary in consequence of an accident¹³ or for any other reason, require a ship to be taken into dock for a survey of its hull or machinery¹⁴.

Where any such person as is mentioned in heads (1) to (3) above has reasonable grounds for believing that there are on any premises provisions or water intended for supply to a United Kingdom ship which, if provided on the ship, would not be in accordance with safety regulations¹⁵ containing requirements as to provisions and water to be provided on ships¹⁶, he may enter the premises and inspect the provisions or water for the purpose of ascertaining whether they would be in accordance with the regulations¹⁷.

If any person obstructs a person in the exercise of these powers¹⁸, or fails to comply with a requirement made by a person exercising his powers, he is liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁹.

1 le other than the Merchant Shipping Act 1995 ss 131-141, 143-151 (oil pollution) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 425 et seq): see s 258(1) (as amended: see note 3).

2 le made under the Merchant Shipping Act 1995, other than ss 131-141, 143-151 (oil pollution) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 425 et seq): see s 258(1) (as amended: see note 3).

3 Merchant Shipping Act 1995 s 258(1) (amended by the Merchant Shipping and Maritime Security Act 1997 ss 9, 29(2), Sch 1 para 4(2), Sch 7 Pt I).

4 Merchant Shipping Act 1995 s 258(1)(a). As to the meaning of 'surveyor of ships' see PARA 46 note 13.

5 Merchant Shipping Act 1995 s 258(1)(b). As to the meaning of 'superintendent' see PARA 60 note 1.

6 As to the Secretary of State see PARA 38.

7 le under the Merchant Shipping Act 1995 s 258: see s 258(1)(c).

8 Merchant Shipping Act 1995 s 258(1)(c). As to the meaning of 'ship' see PARA 229.

9 As to the meaning of 'United Kingdom' see PARA 17 note 3.

10 In the Merchant Shipping Act 1995, 'United Kingdom waters' means the sea or other waters within the seaward limits of the territorial sea of the United Kingdom: see s 313(2)(a). See note 11. As to the territorial sea generally see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 123.

11 Merchant Shipping Act 1995 s 258(1) (as amended: see note 3).

The powers conferred by the Merchant Shipping Act 1995 s 258(1) are, if the ship is a United Kingdom ship, also exercisable outside United Kingdom waters and may be so exercised by a proper officer as well as the persons mentioned in heads (1) to (3) in the text: Merchant Shipping Act 1995 s 258(2) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 1 para 4(4)). In the Merchant Shipping Act 1995, unless the context otherwise requires, 'proper officer' means a consular officer appointed by Her Majesty's government in the United Kingdom and, in relation to a port in a country outside the United Kingdom which is not a foreign country, also any officer exercising in that port functions similar to those of a superintendent; 'consular officer', in relation to a foreign country, means the officer recognised by Her Majesty as a consular officer of that foreign country: s 313(1). As to consular officers in the United Kingdom see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 290 et seq. However, the powers conferred by s 258(1) are not exercisable in relation to a qualifying foreign ship while the ship is exercising the right of innocent passage or the right of transit passage through straits used for international navigation: s 258(1A) (added by the Merchant Shipping and Maritime Security Act 1997 Sch 1 para 4(3)). As to the meaning of 'port' see PARA 46 note 12; as to the meaning of 'qualifying foreign ship' see PARA 19; as to the meanings of 'right of innocent passage', 'right of transit passage' and 'straits used for international passage' see PARA 68; and as to the meaning of 'United Kingdom ship' see PARA 230. As to innocent passage generally see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 133; and as to transit passage generally see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 143.

Ships when in ports in the United Kingdom, and also in the case of United Kingdom ships when elsewhere, are subject to inspection for the purpose of checking that the master and crew are familiar with essential procedures and operations relating to the safety of the ship: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 20(1); and PARA 707. Accordingly, the Merchant Shipping Act 1995 s 258 applies in relation to a ship in a port in the United Kingdom as if, in s 258(1), after 'articles on board' there were inserted 'the familiarity of the crew with essential procedures and operations relating to the safety of the ship': see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 20(2); and PARA 707.

The Merchant Shipping Act 1995 s 258 applies both to the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, and to the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, as if they were for all purposes made under the Merchant Shipping Act 1995 s 85 (see PARA 591 et seq) and accordingly s 258 applies in relation to government ships: see the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 19; the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, reg 22; and PARAS 636, 638. As to government ships see PARA 20.

12 Ie powers under the Merchant Shipping Act 1995 s 258: see s 258(3).

13 As to the power to make provision by safety regulations with respect to the steps to be taken in consequence of any collision involving a ship see PARA 591; and as to accident investigations and inquiries see PARA 844 et seq.

14 Merchant Shipping Act 1995 s 258(3).

15 As to the meaning of 'safety regulations' see PARA 591.

16 As to complaints about provisions or water see PARA 487; and as to the supply of provisions and water see PARA 627.

17 Merchant Shipping Act 1995 s 258(4).

18 Ie powers under the Merchant Shipping Act 1995 s 258: see s 258(5).

19 See the Merchant Shipping Act 1995 s 258(5); and PARA 1239.

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49. Powers of inspectors in relation to premises and ships.

In relation to any premises in the United Kingdom¹ or any United Kingdom ship² wherever it may be, and any other ship which is present in the United Kingdom or in United Kingdom waters³, an inspector⁴:

- 123 (1) may at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) enter any premises or board any ship if he has reason to believe that it is necessary for him to do so⁵;
- 124 (2) may, on entering any premises by virtue of head (1) above or on boarding a ship by virtue of head (1) above, take with him any other person authorised for the purpose by the Secretary of State and any equipment or materials he requires⁶;
- 125 (3) may make such examination and investigation as he considers necessary⁷;
- 126 (4) may give a direction requiring that the premises or ship or any part of the premises or ship or any thing in the premises or ship or such a part are to be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under head (3) above⁸;
- 127 (5) may take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under head (3) above⁹;
- 128 (6) may take samples of any articles or substances found in the premises or ship and of the atmosphere in or in the vicinity of the premises or ship¹⁰;
- 129 (7) may, in the case of any article or substance which he finds in the premises or ship and which appears to him to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is in the circumstances necessary)¹¹;
- 130 (8) may, in the case of any such article or substance as is mentioned in head (7) above, take possession of it and detain it for so long as is necessary for all or any of the following purposes¹², namely: (a) to examine it and do to it anything which he has power to do under head (7) above¹³; (b) to ensure that it is not tampered with before his examination of it is completed¹⁴; (c) to ensure that it is available for use as evidence in any proceedings for an offence under the Merchant Shipping Act 1995 or any instrument made under it¹⁵;
- 131 (9) may require any person who he has reasonable cause to believe is able to give any information relevant to any examination or investigation under head (3) above¹⁶: (a) to attend at a place and time specified by the inspector¹⁷; and (b) to answer, in the absence of persons other than any persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed, such questions as the inspector thinks fit to ask¹⁸; and (c) to sign a declaration of the truth of his answers¹⁹;
- 132 (10) may require the production of, and inspect and take copies of or of any entry in²⁰: (a) any books or documents which by virtue of any provision of the Merchant Shipping Act 1995 are required to be kept²¹; and (b) any other books or documents which he considers it necessary for him to see for the purposes of any examination or investigation under head (3) above²²;

- 133 (11) may require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by heads (1) to (10) above²³.

However, nothing in these powers²⁴ authorises a person unnecessarily to prevent a ship from proceeding on a voyage²⁵.

A person who:

- 134 (i) intentionally obstructs an inspector in the exercise of any power available to him²⁶ in relation to premises and ships²⁷; or
 135 (ii) without reasonable excuse does not comply with a requirement duly imposed²⁸ or prevents another person from complying with such a requirement²⁹; or
 136 (iii) without prejudice to the generality of head (ii) above, makes a statement or signs a declaration which he knows is false, or recklessly makes a statement or signs a declaration which is false, in purported compliance with a requirement duly made³⁰,

is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to a fine not exceeding the statutory maximum³¹.

1 Merchant Shipping Act 1995 s 259(1)(a). As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 Merchant Shipping Act 1995 s 259(1)(b). As to the meaning of 'United Kingdom ship' see PARA 230; and as to the meaning of 'ship' see PARA 229.

3 Merchant Shipping Act 1995 s 259(1). As to the meaning of 'United Kingdom waters' see PARA 48 note 10. As to the exercise of certain powers under s 259(1) see further notes 5, 7, 20.

4 Merchant Shipping Act 1995 s 259(2). The powers conferred by s 259 are available to any Departmental inspector, or any inspector appointed under s 256(6) (see PARA 46), for the purpose of performing his functions: see s 259(1). As to the meaning of 'Departmental inspector' see PARA 46 note 2.

The powers conferred on a Departmental inspector by s 259 are conferred also on a superintendent or proper officer holding an inquiry under s 272: see s 272(2); and PARA 874. As to the meaning of 'proper officer' see PARA 48 note 11; and as to the meaning of 'superintendent' see PARA 60 note 1.

The powers conferred on an inspector by s 259 are conferred also on:

- 16 (1) an arbitrator to whom certain matters are referred in relation to a detention notice issued under s 95 (see PARA 1204) (see s 96(8); and PARA 1205);
 17 (2) (with the exception of s 259(3), (4), (6) (see the text and notes 5, 7, 20)) arbitrators to whom certain questions arising in relation to ss 261-263 (see PARAS 50-52) are referred (see s 264(7); and PARA 53);
 18 (3) inspectors of marine accidents (see s 267(8); and PARA 844) and certain persons specified in regulations made under s 267 with respect to the investigation of such accidents (see s 267(4) (i); the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10; and PARA 852);
 19 (4) a superintendent or proper officer (see the Merchant Shipping Act 1995 s 271(4); and PARA 873);
 20 (5) (with the exception of s 259(2)(d)-(h) (see heads (4) to (8) in the text)) an inspector appointed for the purpose of determining whether a fishing vessel is eligible to be registered on Part II of the central register of British ships (see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 16; and PARA 265);
 21 (6) an arbitrator to whom certain matters are referred in relation to a detention notice or access refusal notice in pursuance of a power of detention or refusal of access to which the

Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 11 (right of appeal and compensation) applies (see reg 11(8); and PARA 700);

- 22 (7) an authorised person exercising functions under the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, reg 4 (powers of inspection, suspension of service and detention) (see reg 4(4); and PARA 632);
- 23 (8) an authorised person exercising functions under the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 16 (powers of audit, inspection, suspension of service and detention) (see PARA 632); and
- 24 (9) an authorised person exercising functions under the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 9 (enforcement) (see PARA 633).

The Merchant Shipping Act 1995 s 259 and s 260 apply both to the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, and to the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, as if they were for all purposes made under the Merchant Shipping Act 1995 s 85 (see PARA 591 et seq) and accordingly ss 259, 260 apply in relation to government ships: see the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 19; the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, reg 22; and PARAS 636, 638. As to government ships see PARA 20.

5 Merchant Shipping Act 1995 s 259(2)(a).

The powers conferred by s 259(2)(a) are also exercisable, in relation to a ship in a harbour in the United Kingdom, by the harbour master or other persons appointed by the Secretary of State for the purpose, for the purpose of ascertaining the circumstances relating to an alleged discharge of oil or a mixture containing oil from the ship into the harbour: s 259(6). In the Merchant Shipping Act 1995, unless the context otherwise requires, 'harbour' includes estuaries, navigable rivers, piers, jetties and other works in or at which ships can obtain shelter or ship and unship goods or passengers: s 313(1). As to the Secretary of State see PARA 38.

The powers conferred by s 259(2) to inspect premises are also exercisable, for the purposes of Pt VI Ch II (ss 131-151) (oil pollution) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 425 et seq), in relation to any apparatus used for transferring oil: s 259(4). In this context, and in relation to places on land in Northern Ireland and apparatus located in Northern Ireland otherwise than on board ships, see further s 259(5). See note 4.

6 Merchant Shipping Act 1995 s 259(2)(b). See notes 4, 5.

7 Merchant Shipping Act 1995 s 259(2)(c). See notes 4, 5.

The powers conferred by s 259(2)(c) are also exercisable, in relation to a ship in a harbour in the United Kingdom, by the harbour master or other persons appointed by the Secretary of State for the purpose, for the purpose of ascertaining the circumstances relating to an alleged discharge of oil or a mixture containing oil from the ship into the harbour: s 259(6).

8 Merchant Shipping Act 1995 s 259(2)(d). See notes 4, 5.

9 Merchant Shipping Act 1995 s 259(2)(e). See notes 4, 5.

10 Merchant Shipping Act 1995 s 259(2)(f). See notes 4, 5.

The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of samples under s 259(2)(f) and provision as to the way in which samples that have been so taken are to be dealt with: s 259(8). At the date at which this volume states the law, no such regulations had been made. As to the Secretary of State's power to make regulations generally, and as to his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations, see PARA 41.

11 Merchant Shipping Act 1995 s 259(2)(g). See notes 4, 5.

Where an inspector proposes to exercise the power conferred by s 259(2)(g) in the case of an article or substance found in any premises or ship, he must, if so requested by a person who at the time is present and has responsibilities in relation to the premises or ship, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of that person: s 259(9). Before exercising the power conferred by s 259(2)(g), an inspector must consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power: s 259(10).

12 Merchant Shipping Act 1995 s 259(2)(h). See notes 4, 5.

Where, under the power conferred by s 259(2)(h), an inspector takes possession of any article or substance found in any premises or ship, he must leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and, before taking possession of any such substance under that power, an inspector must, if it is practicable for him to do so, take a sample of the substance and give to a responsible person at the premises or on board the ship a portion of the sample marked in a manner sufficient to identify it: s 259(11). The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of samples under s 259(11) and provision as to the way in which samples that have been so taken are to be dealt with: s 259(8). At the date at which this volume states the law, no such regulations had been made. As to the service of documents under the Merchant Shipping Act 1995 generally see s 291; and PARA 73.

13 Merchant Shipping Act 1995 s 259(2)(h)(i). See notes 4, 5.

14 Merchant Shipping Act 1995 s 259(2)(h)(ii). See notes 4, 5.

15 Merchant Shipping Act 1995 s 259(2)(h)(iii). See notes 4, 5. As to offences under the Merchant Shipping Act 1995 and instruments made thereunder see PARA 1100 et seq.

16 Merchant Shipping Act 1995 s 259(2)(i). See notes 4, 5.

17 Merchant Shipping Act 1995 s 259(2)(i)(i). See notes 4, 5.

A person who complies with a requirement imposed on him in pursuance of s 259(2)(i)(i) is entitled to recover from the person who imposed the requirement such sums in respect of the expenses incurred in complying with the requirement as are prescribed by regulations made by the Secretary of State: s 260(3). Such regulations may make different provision for different circumstances: s 260(4). Any payments so made must be made out of money provided by Parliament: s 260(5). However, at the date at which this volume states the law, no such regulations had been made.

18 Merchant Shipping Act 1995 s 259(2)(i)(ii). See notes 4, 5.

No answer given by a person in pursuance of a requirement imposed under s 259(2)(i) is admissible in evidence against that person or the husband or wife of that person in any proceedings except proceedings in pursuance of s 260(1)(c) (see head (iii) in the text) in respect of a statement in or a declaration relating to the answer; and a person nominated as mentioned in s 259(2)(i) is entitled, on the occasion on which the questions there mentioned are asked, to make representations to the inspector on behalf of the person who nominated him: s 259(12).

19 Merchant Shipping Act 1995 s 259(2)(i)(iii). See notes 4, 5.

20 Merchant Shipping Act 1995 s 259(2)(j). See notes 4, 5.

The powers conferred by s 259(2)(j) are also exercisable, in relation to a ship in a harbour in the United Kingdom, by the harbour master or other persons appointed by the Secretary of State for the purpose, for the purpose of ascertaining the circumstances relating to an alleged discharge of oil or a mixture containing oil from the ship into the harbour: s 259(6).

The powers conferred by s 259(2) to require the production of any document and copy it include, in relation to oil record books required to be carried under s 142 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 432), power to require the master to certify the copy as a true copy: s 259(3). As to the meaning of 'master' see PARA 424.

However, nothing in s 259 is to be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court: s 260(2). As to legal professional privilege see **CIVIL PROCEDURE** vol 11 (2009) PARAS 558 et seq, 972; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1479. See also **LEGAL PROFESSIONS** vol 65 (2008) PARA 740.

21 Merchant Shipping Act 1995 s 259(2)(j)(i). See notes 4, 5.

22 Merchant Shipping Act 1995 s 259(2)(j)(ii). See notes 4, 5.

23 Merchant Shipping Act 1995 s 259(2)(k). See notes 4, 5.

A person who complies with a requirement imposed on him in pursuance of s 259(2)(k) is entitled to recover from the person who imposed the requirement such sums in respect of the expenses incurred in complying with the requirement as are prescribed by regulations made by the Secretary of State: s 260(3). Such regulations

may make different provision for different circumstances: s 260(4). At the date at which this volume states the law, no such regulations had been made. Any payments so made must be made out of money provided by Parliament: s 260(5).

- 24 le nothing in the Merchant Shipping Act 1995 s 259(1)-(6) (see the text and notes 1-23): see s 259(7).
- 25 Merchant Shipping Act 1995 s 259(7). See note 4.
- 26 le under the Merchant Shipping Act 1995 s 259 (see the text and notes 1-25): see s 260(1)(a).
- 27 See the Merchant Shipping Act 1995 s 260(1)(a); and PARA 1240. See note 4.
- 28 le in pursuance of the Merchant Shipping Act 1995 s 259 (see the text and notes 1-25): see s 260(1)(b).
- 29 See the Merchant Shipping Act 1995 s 260(1)(b); and PARA 1240. See note 4.
- 30 See the Merchant Shipping Act 1995 s 260(1)(c); and PARA 1240. The text refers to a requirement made in pursuance of s 259(2)(i) (see head (9) in the text): see s 260(1)(c). See notes 4, 18.
- 31 See the Merchant Shipping Act 1995 s 260(1); and PARA 1240. See note 4.

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C. POWERS IN CONNECTION WITH IMPROVEMENT NOTICES AND PROHIBITION NOTICES

50. Improvement notices.

If an inspector appointed by the Secretary of State¹ is of the opinion that a person:

- 137 (1) is contravening one or more of the relevant statutory provisions²; or
- 138 (2) has contravened one or more of those provisions in circumstances that make it likely that the contravention³ will continue or be repeated⁴,

he may serve on that person a notice (an 'improvement notice')⁵.

An improvement notice must:

- 139 (a) state that the inspector is of such opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion⁶; and
- 140 (b) require the person on whom the notice is served to remedy the contravention in question or, as the case may be, the matters occasioning it within such period as may be specified in the notice⁷.

The period specified in pursuance of head (b) above must not expire before the end of the period within which a notice can be given to the inspector⁸ requiring questions relating to the improvement notice to be referred to arbitration⁹.

1 le an inspector appointed under the Merchant Shipping Act 1995 s 256(6) (see PARA 46); see s 261(1). As to the Secretary of State see PARA 38.

2 Merchant Shipping Act 1995 s 261(1)(a). See note 5. For these purposes, 'relevant statutory provisions' means:

25 (1) s 43 (see PARA 485), s 44 (see PARA 487), s 46 (see PARA 489), s 47 (see PARA 490), s 48 (see PARA 491), s 49 (see PARA 1136), s 50 (see PARA 501), s 51 (see PARA 492), s 52 (see PARA 1140), s 53 (see PARA 493), s 54 (see PARA 494), s 55 (see PARA 503), s 85 (see PARA 591), s 86 (see PARA 592), s 88 (and Sch 2) (see PARAS 595-598), s 99 (see PARA 1208), s 109 (see PARA 458), s 115 (see PARA 626), s 116 (see PARA 502), s 121 (see PARA 604), s 122 (see PARA 605), s 123 (see PARA 606), s 124 (see PARA 606), s 125 (see PARA 607), s 126 (see PARA 608), ss 128-130A (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 360, 362, 364, 421), ss 131-151 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 425 et seq) and s 272 (see PARA 874) (s 261(4)(a) (amended by the Merchant Shipping and Maritime Security Act 1997 s 29(1), Sch 6 para 16; SI 1998/2241; and SI 1998/2647)); and

26 (2) the provisions of any instrument of a legislative character having effect under any of those provisions (Merchant Shipping Act 1995 s 261(4)(b)).

3 For these purposes, 'contravention' includes failure to comply; and 'failure' includes refusal: Merchant Shipping Act 1995 s 313(1).

4 Merchant Shipping Act 1995 s 261(1)(b). See note 5.

5 Merchant Shipping Act 1995 s 261(1). A notice served on a person under s 261 is referred to in ss 262-266 (see PARAS 51-54, 1241) as an improvement notice: see s 261(1). As to the service of documents under the Merchant Shipping Act 1995 generally see s 291; and PARA 73. As to the content and effect of improvement notices see PARA 52; and as to offences arising from the contravention of any requirement imposed by an improvement notice see PARA 1241.

The Merchant Shipping Act 1995 s 261 applies both to the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, and to the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, as if they were for all purposes made under the Merchant Shipping Act 1995 s 85 (see PARA 591 et seq) and accordingly s 261 applies in relation to government ships: see the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 19; the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, reg 22; and PARAS 636, 638. As to government ships see PARA 20.

6 Merchant Shipping Act 1995 s 261(2)(a). See note 5.

7 Merchant Shipping Act 1995 s 261(2)(b). See note 5.

8 le under the Merchant Shipping Act 1995 s 264 (see PARA 53): see s 261(3). Any notice authorised by s 261 to be given to an inspector may be given by delivering it to him or by leaving it at, or sending it by post to, his office: see s 291(5); and PARA 73.

9 Merchant Shipping Act 1995 s 261(3). See note 5. As to references to arbitration see PARA 53.

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51. Prohibition notices.

If, as regards any relevant activities¹ which are being or are likely to be carried on on board any ship² by or under the control of any person, an inspector appointed by the Secretary of State³ is of the opinion that, as so carried on or as likely to be so carried on, the activities involve or, as the case may be, will involve the risk of serious personal injury to any person (whether on board the ship or not) or serious pollution of any navigable waters, the inspector may serve on the first-mentioned person a notice (a 'prohibition notice')⁴.

A prohibition notice must:

- 141 (1) state that the inspector is of such opinion⁵;
- 142 (2) specify the matters which in his opinion give or, as the case may be, will give rise to such risk⁶;
- 143 (3) where in his opinion any of those matters involve or, as the case may be, will involve a contravention⁷ of any of the relevant statutory provisions state that he is of that opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion⁸; and
- 144 (4) direct:
 - 3 3. (a) that the activities to which the notice relates are not to be carried on by or under the control of the person on whom the notice is served⁹; or
 - 4 4. (b) that the ship is not to go to sea¹⁰,
- 145 (or both of those things) unless the matters specified in the notice in pursuance of head (2) above, and any associated contraventions of any provision so specified in pursuance of head (3) above, have been remedied¹¹.

A direction contained in a prohibition notice in pursuance of head (4) above takes effect at the end of the period specified in the notice or, if the direction is given in pursuance of head (4)(b) above or the notice so declares, immediately¹².

1 For these purposes, 'relevant activities' means activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are carried on as mentioned in the Merchant Shipping Act 1995 s 262(1), apply: see s 262(2). As to the meaning of 'relevant statutory provisions' for these purposes see PARA 50 note 2.

2 As to the meaning of 'ship' see PARA 229.

3 I.e. an inspector appointed under the Merchant Shipping Act 1995 s 256(6) (see PARA 46): see s 262(1). As to the Secretary of State see PARA 38.

4 Merchant Shipping Act 1995 s 262(1). A notice served on a person under s 262 is referred to in ss 263-266 (see PARAS 52-54, 1241) as a prohibition notice: see s 262(1). As to the service of documents under the Merchant Shipping Act 1995 generally see s 291; and PARA 73. As to the content and effect of prohibition notices see PARA 52; as to compensation in connection with invalid prohibition notices see PARA 54; and as to offences arising from the contravention of any requirement imposed by a prohibition notice see PARA 1241.

The Merchant Shipping Act 1995 s 262 applies both to the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, and to the Merchant Shipping and Fishing Vessels (Health and

Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, as if they were for all purposes made under the Merchant Shipping Act 1995 s 85 (see PARA 591 et seq) and accordingly s 262 applies in relation to government ships: see the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 19; the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, reg 22; and PARAS 636, 638. As to government ships see PARA 20.

- 5 Merchant Shipping Act 1995 s 262(3)(a). See note 4.
- 6 Merchant Shipping Act 1995 s 262(3)(b). See note 4.
- 7 As to the meaning of 'contravention' see PARA 50 note 3.
- 8 Merchant Shipping Act 1995 s 262(3)(c). See note 4.
- 9 Merchant Shipping Act 1995 s 262(3)(d)(i). See note 4.
- 10 Merchant Shipping Act 1995 s 262(3)(d)(ii). See note 4.
- 11 Merchant Shipping Act 1995 s 262(3)(d). See note 4.
- 12 Merchant Shipping Act 1995 s 262(4). See note 4.

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52. Contents and effect of notices.

An improvement notice¹ or a prohibition notice² may, but need not, include directions as to the measures to be taken to remedy any contravention³ or matter to which the notice relates; and any such directions may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter⁴.

An improvement notice or a prohibition notice must not direct any measures to be taken to remedy the contravention of any of the relevant statutory provisions⁵ that are more onerous than those necessary to secure compliance with that provision⁶.

Where an improvement notice or a prohibition notice that is not to take immediate effect has been served: (1) the notice may be withdrawn by an inspector at any time before the end of the period specified in it⁷; and (2) the period so specified may be extended or further extended by an inspector at any time when a reference to arbitration in respect of the notice is not pending⁸.

1 As to the meaning of 'improvement notice' see PARA 50.

2 As to the meaning of 'prohibition notice' see PARA 51.

3 As to the meaning of 'contravention' see PARA 50 note 3.

4 Merchant Shipping Act 1995 s 263(1).

The Merchant Shipping Act 1995 s 263 applies both to the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, and to the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, as if they were for all purposes made under the Merchant Shipping Act 1995 s 85 (see PARA 591 et seq) and accordingly s 263 applies in relation to government ships: see the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 19; the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, reg 22; and PARAS 636, 638. As to government ships see PARA 20.

5 As to the meaning of 'relevant statutory provisions' for these purposes see PARA 50 note 2.

6 Merchant Shipping Act 1995 s 263(2). See note 4.

7 Merchant Shipping Act 1995 s 263(3)(a). The text refers to such periods as may be specified in the notice in pursuance of s 261(2)(b) (see PARA 50) or, as the case may be, s 262(4) (see PARA 51): see s 263(3)(a). See note 4.

8 Merchant Shipping Act 1995 s 263(3)(b). The text refers to a reference to arbitration which is not pending under s 264 (see PARA 53): see s 263(3)(b). See note 4.

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53. References of notices to arbitration.

Any question:

- 146 (1) as to whether any of the reasons or matters specified in an improvement notice¹ or a prohibition notice² in connection with any opinion formed by the inspector³ constituted a valid basis for that opinion⁴; or
- 147 (2) as to whether any directions included in such a notice⁵ were reasonable⁶,

must, if the person on whom the notice was served so requires by a notice given to the inspector⁷ within 21 days from the service of the improvement or prohibition notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by him⁸.

Where a notice to arbitration is so given by a person⁹, then:

- 148 (a) in the case of an improvement notice, the giving of the notice has the effect of suspending the operation of the improvement notice until the decision of the arbitrator is published to the parties or the reference is abandoned by that person¹⁰;
- 149 (b) in the case of a prohibition notice, the giving of the notice has the effect of so suspending the operation of the prohibition notice if, but only if, on the application of that person the arbitrator so directs, and then only from the giving of the direction¹¹.

Where, on a reference to arbitration¹², the arbitrator decides as respects any reason, matter or direction to which the reference relates, that in all the circumstances either: (i) the reason or matter did not constitute a valid basis for the inspector's opinion¹³; or (ii) the direction was unreasonable¹⁴, he must either cancel the notice or affirm it with such modifications as he may in the circumstances think fit; and in any other case the arbitrator must affirm the notice in its original form¹⁵. However, where any such reference¹⁶ involves the consideration by the arbitrator of the effects of any particular activities or state of affairs on the health or safety of any persons, he must not on that reference make any such decision as is mentioned either in head (i) or head (ii) above except after:

- 150 (A) in the case of an improvement notice, affording an opportunity of making oral representations to him with respect to those effects to a member of any such panel of representatives of maritime trade unions as may be appointed by the Secretary of State for these purposes¹⁷; or
- 151 (B) in the case of a prohibition notice, affording an opportunity of making such representations to him to either a representative of a trade union representing persons whose interests it appears to him that the notice was designed to safeguard or a member of any such panel as is referred to in head (A) above, as he thinks appropriate¹⁸; and
- 152 (C) (in either case) considering any representations made to him in pursuance of head (A) or head (B) above¹⁹.

1 le specified in an improvement notice in pursuance of the Merchant Shipping Act 1995 s 261(2)(a) (see PARA 50): see s 264(1)(a). As to the meaning of 'improvement notice' see PARA 50.

2 le specified in a prohibition notice in pursuance of the Merchant Shipping Act 1995 s 262(3)(b) or s 262(3)(c) (see PARA 51): see s 264(1)(a). As to the meaning of 'prohibition notice' see PARA 51.

3 le an inspector appointed by the Secretary of State under the Merchant Shipping Act 1995 s 256(6): see PARA 46. As to the Secretary of State see PARA 38.

4 Merchant Shipping Act 1995 s 264(1)(a).

5 le any directions included in pursuance of the Merchant Shipping Act 1995 s 263(1) (see PARA 52): see s 264(1)(b).

6 Merchant Shipping Act 1995 s 264(1)(b).

7 As to the service of documents under the Merchant Shipping Act 1995 generally see s 291; and PARA 73. Any notice authorised by s 264 to be given to an inspector may be given by delivering it to him or by leaving it at, or sending it by post to, his office: see s 291(5); and PARA 73.

8 Merchant Shipping Act 1995 s 264(1). As to references to an arbitrator in Scotland see s 264(8). The provisions of the Arbitration Act 1996 Pt I (ss 1-84) apply to every arbitration under an enactment (a 'statutory arbitration') (see s 94), subject to certain adaptations and exclusions (see ss 95-98); and see **ARBITRATION** vol 2 (2008) PARA 1209 et seq.

In connection with his functions under the Merchant Shipping Act 1995 s 264, an arbitrator has the powers conferred on an inspector by s 259, other than s 259(3), (4), (6) (see PARA 49): s 264(7). However, a person is not qualified for appointment as an arbitrator under s 264 unless he is:

27 (1) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate (s 264(5)(a));

28 (2) a naval architect (s 264(5)(b));

29 (3) a person who satisfies the judicial-appointment eligibility condition on a seven-year basis (see **LEGAL PROFESSIONS**), is an advocate or solicitor in Scotland of at least seven years' standing, or is a member of the bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland of at least seven years' standing (s 264(5)(c), (6) (s 264(6) amended by the Tribunals, Courts and Enforcement Act 2007 s 50, Sch 10 Pt 1 para 26(1)-(3))); or

30 (4) a person with special experience of shipping matters, of the fishing industry or of activities carried on in ports (Merchant Shipping Act 1995 s 264(5)(d)).

As to the meaning of 'port' see PARA 46 note 12. As to the judicial-appointment eligibility condition see the Tribunals, Courts and Enforcement Act 2007 ss 50-52. As from a day to be appointed under the Constitutional Reform Act 2005 s 148(1), the reference in head (3) to a 'solicitor of the Supreme Court of Northern Ireland' is amended to read 'solicitor of the Court of Judicature of Northern Ireland': see the Merchant Shipping Act 1995 s 264(6) (prospectively amended by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 3 para 5). However, at the date at which this volume states the law, no such day had been appointed.

In the operation of s 264, as it is applied by the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 25 (see PARA 600) and as it applies in relation to a detention notice or order so served on the master of a ship which is not a British ship, the giving of a notice under the Merchant Shipping Act 1995 s 264 (as so applied) does not operate to suspend the operation of the detention notice or order: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 10(4); and PARA 700.

The Merchant Shipping Act 1995 s 264 applies both to the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, and to the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, as if they were for all purposes made under the Merchant Shipping Act 1995 s 85 (see PARA 591 et seq) and accordingly s 264 applies in relation to government ships: see the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 19; the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, reg 22; and PARAS 636, 638. As to government ships see PARA 20.

9 le in accordance with the Merchant Shipping Act 1995 s 264(1) (see the text and notes 1-8): see s 264(2).

10 Merchant Shipping Act 1995 s 264(2)(a).

- 11 Merchant Shipping Act 1995 s 264(2)(b).
- 12 le a reference under the Merchant Shipping Act 1995 s 264: see s 264(3).
- 13 Merchant Shipping Act 1995 s 264(3)(a).
- 14 Merchant Shipping Act 1995 s 264(3)(b).
- 15 Merchant Shipping Act 1995 s 264(3).
- 16 le a reference under the Merchant Shipping Act 1995 s 264: see s 264(4).
- 17 Merchant Shipping Act 1995 s 264(4)(a).
- 18 Merchant Shipping Act 1995 s 264(4)(b).
- 19 Merchant Shipping Act 1995 s 264(4)(c).

UPDATE

53 References of notices to arbitration

NOTE 8--Appointed day is 1 October 2009: SI 2009/1604.

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54. Compensation in connection with invalid prohibition notices.

If, on a reference to arbitration¹ relating to a prohibition notice²:

- 153 (1) the arbitrator³ decides that any reason or matter did not constitute a valid basis for the inspector's opinion⁴; and
- 154 (2) it appears to him that there were no reasonable grounds for the inspector to form that opinion⁵,

the arbitrator may award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of the service of the notice as the arbitrator thinks fit⁶.

If, on any such reference, the arbitrator decides that any direction included in the notice⁷ was unreasonable, the arbitrator may award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of the direction as the arbitrator thinks fit⁸.

An arbitrator must not, however, award any such compensation⁹ in the case of any prohibition notice unless:

- 155 (a) it appears to him that the direction given¹⁰ contained a specific requirement that the ship was not to go to sea¹¹; or
- 156 (b) it appears to him that the inspector was of the opinion that there would be such a risk of injury or pollution as is referred to in the notice if the ship went to sea and that the effect of the direction so given¹² was to prohibit the departure of the ship unless the matters, or (as the case may be) the matters and contraventions¹³, referred to in the direction were remedied¹⁴.

Any compensation so awarded¹⁵ is payable by the Secretary of State¹⁶.

1 le a reference under the Merchant Shipping Act 1995 s 264 (see PARA 53): see s 265(1).

2 Merchant Shipping Act 1995 s 265(1). As to the meaning of 'prohibition notice' see PARA 51.

3 As to the arbitrator see PARA 53 note 8; and as to references to an arbitrator in Scotland see s 265(5).

4 Merchant Shipping Act 1995 s 265(1)(a). The text refers to an inspector appointed by the Secretary of State under the Merchant Shipping Act 1995 s 256(6): see PARA 46. As to the Secretary of State see PARA 38.

In the operation of s 265, as it is applied by the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 25 (see PARA 600) and as it applies in relation to a detention notice or order so served on the master of a ship which is not a British ship, on a reference under the Merchant Shipping Act 1995 s 264 (as so applied) (see PARA 53) the burden of satisfying the arbitrator as to the matters specified in s 265(1)(a) and in s 265(1)(b) (see head (2) in the text) lies with the owner: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 10(4); and PARA 700.

5 Merchant Shipping Act 1995 s 265(1)(b). See note 4.

6 Merchant Shipping Act 1995 s 265(1).

The Merchant Shipping Act 1995 s 265 applies both to the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, and to the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, as if they were for all purposes made under the Merchant Shipping Act 1995 s 85 (see PARA 591 et seq) and accordingly s 265 applies in relation to government ships: see the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 19; the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, reg 22; and PARAS 636, 638. As to government ships see PARA 20.

7 As to such directions see PARAS 51-52.

8 Merchant Shipping Act 1995 s 265(2).

9 Ie under the Merchant Shipping Act 1995 s 265(1) (see the text and notes 1-6) or s 265(2) (see the text and notes 7-8): see s 265(3).

10 Ie in pursuance of the Merchant Shipping Act 1995 s 262(3)(d) (see PARA 51): see s 265(3)(a).

11 Merchant Shipping Act 1995 s 265(3)(a). The text refers to any such requirement as is mentioned in s 262(3)(d)(ii) (see PARA 51): see s 265(3)(a). As to the meaning of 'ship' see PARA 229.

12 Ie given in pursuance of the Merchant Shipping Act 1995 s 262(3)(d) (see PARA 51): see s 265(3)(b).

13 As to the meaning of 'contravention' see PARA 50 note 3.

14 Merchant Shipping Act 1995 s 265(3)(b).

15 Ie under the Merchant Shipping Act 1995 s 265 (see the text and notes 1-14): see s 265(4).

16 Merchant Shipping Act 1995 s 265(4).

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(iv) Lighthouse Authorities

55. The Lighthouse Authorities.

There are three General Lighthouse Authorities (GLAs)¹, each with separate geographical responsibilities, namely:

- 157 (1) the Trinity House which is the GLA as respects England and Wales and the adjacent seas and islands²;
- 158 (2) the Northern Lighthouse Board (Commissioners of Northern Lighthouses) which is the GLA as respects Scotland and the adjacent seas and islands, as well as respects the Isle of Man and the seas adjacent thereto³; and
- 159 (3) the Commissioners of Irish Lights who constitute the GLA as respects Northern Ireland and the adjacent seas and islands, as well as the Republic of Ireland⁴.

The three GLAs provide, for example, lighthouse services and navigational aids and other aids for the safety of ships⁵.

The GLAs are funded exclusively through the General Lighthouse Fund (GLF) which is administered by the Secretary of State⁶. Its income is mainly derived from the payment of general light dues charged predominantly on commercial shipping in the United Kingdom and Ireland (both Northern Ireland and the Republic of Ireland)⁷ but the fund is supplemented by a grant from the Irish government.

All lighthouses were automated by 1998, with controls centralised at each GLA's headquarters, and the GLAs have focused since on continuing to reduce costs and on investing inwardly in both depots and ships.

1 As to the lighthouse authorities generally see PARA 1068 et seq.

2 See PARA 1069.

3 See PARA 1070.

4 See PARA 1071.

5 See PARA 1074 et seq.

6 See PARA 1089 et seq.

The current funding arrangements were established by the Merchant Shipping (Mercantile Marine Fund) Act 1898 (repealed), which separated the funding for aids to navigation from other marine items. The GLAs, however, predate the establishment of the Fund by over 350 years, although it was not until 1836 that the GLAs had compulsory powers to buy out private lighthouses, which had up to that point shared with the GLAs the right (generally purchased from the Treasury or the Crown) to provide the aid to navigation and to levy a charge on passing ships.

7 See PARA 1083 et seq.

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(v) Other Bodies and Agencies

56. The Maritime and Coastguard Agency.

The Maritime and Coastguard Agency ('MCA'), which is an executive agency of the Department for Transport¹, is responsible throughout the United Kingdom² for implementing the government's maritime safety policy³. This includes providing Maritime Safety Information ('MSI') to ships at sea (including the broadcast of warnings and forecasts), co-ordinating search and rescue ('SAR') at sea through Her Majesty's Coastguard⁴, and checking that ships (both United Kingdom ships and ships of other flags visiting United Kingdom ports) meet United Kingdom and international safety rules⁵.

1 As to the Department of Transport see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 509-511. As to the functions of the Secretary of State under the Merchant Shipping Act 1995 see PARA 39 et seq.

Executive agencies are more or less autonomous units, operating within a framework document and business plan, with key performance targets set annually by the appropriate Minister and announced to Parliament. Each executive agency has a chief executive, directly accountable to the Minister: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 551.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 See the Maritime and Coastguard Agency's website which, at the date at which this volume states the law, was available at <http://www.mcga.gov.uk>. The MCA came into being in 1998 when the Coastguard Agency and Marine Safety Agency ('MSA') merged.

4 As to Her Majesty's Coastguard see PARA 57.

5 As to the MCA's statutory obligation to conduct International Safety Management ('ISM') audits within the shipping industry and to ensure compliance with the ISM Code see PARA 631 et seq.

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57. Her Majesty's Coastguard.

Her Majesty's Coastguard consists of such numbers of officers and men as the Secretary of State¹ may with the consent of the Treasury from time to time think fit, and is raised, maintained, equipped and governed by the Secretary of State and employed as a coast-watching force².

The management and control of Her Majesty's Coastguard is vested in the Secretary of State³. However, whenever any emergency arises which, in the opinion of the Secretary of State for Defence⁴, renders it advisable that the coastguard should be placed under his control, he may by order direct that its management and control be transferred to him, and, whilst such an order is in force, the officers and men of the coastguard become subject to the Naval Discipline Act 1957⁵ with such rank and rating and such pay and emoluments as may be determined by him⁶. As soon as the Secretary of State for Defence is of the opinion that the emergency has ended, the order must be revoked, but this is without prejudice to anything done under the order⁷.

1 As to the Secretary of State for these purposes see the text and notes 3-7.

2 See the Coastguard Act 1925 s 1(1); and **ARMED FORCES** vol 2(2) (Reissue) PARA 181. As to the function of the coastguard in relation to wrecks see PARAS 123, 987 et seq. As to remuneration under the Merchant Shipping Act 1995 for coastguard services especially see PARA 990.

The Maritime and Coastguard Agency ('MCA') co-ordinates search and rescue ('SAR') at sea through Her Majesty's Coastguard: see PARA 56. There is no duty of care owed by the coastguard to persons in distress in the context of a search and rescue operation: *OLL Ltd v Secretary of State for Transport* [1997] 3 All ER 897.

3 I.e. primarily the Secretary of State for Business, Enterprise and Regulatory Reform: see **ARMED FORCES** vol 2(2) (Reissue) PARA 181. As to the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry) see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 506.

4 As to the Secretary of State for Defence see **ARMED FORCES** vol 2(2) (Reissue) PARA 2.

5 The provisions of the Naval Discipline Act 1957 specifying the classes of persons who are subject to it (see **ARMED FORCES** vol 2(2) (Reissue) PARAS 306, 309 et seq) do not affect the application of the Act to any person to whom it applies by virtue of the Coastguard Act 1925: see the Naval Discipline Act 1957 s 138(2); and **ARMED FORCES** vol 2(2) (Reissue) PARA 181. As from a day to be appointed under the Armed Forces Act 2006 s 383(2), the Naval Discipline Act 1957 s 138(2) is repealed: see the Armed Forces Act 2006 ss 378(2), 382, Sch 17 (which provides for the expiry of the Naval Discipline Act 1957 on 8 November 2007 unless continued in force by Order in Council). The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2008, SI 2008/1780, has been made under the Armed Forces Act 2006 s 382 and, accordingly, the Naval Discipline Act 1957 continues in force until 8 November 2009: see the Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2008, SI 2008/1780, art 2. However, such an Order may not provide for the continuation of the Naval Discipline Act 1957 beyond the end of the year 2011: see the Armed Forces Act 2006 s 382(4).

6 See the Coastguard Act 1925 s 2(1); and **ARMED FORCES** vol 2(2) (Reissue) PARA 181. As from a day to be appointed under the Armed Forces Act 2006 s 383(2), the Coastguard Act 1925 s 2 is repealed: see the Armed Forces Act 2006 s 378(2), Sch 17. However, at the date at which this volume states the law, no such day had been appointed.

7 See the Coastguard Act 1925 s 2(2); and **ARMED FORCES** vol 2(2) (Reissue) PARA 181. See note 6.

UPDATE

57 Her Majesty's Coastguard

NOTE 3--The functions of the Secretary of State for Business, Enterprise and Regulatory Reform have been transferred to the Secretary of State for Business, Innovation and Skills: see the Secretary of State for Business, Innovation and Skills Order 2009, SI 2009/2748.

TEXT AND NOTES 4-7--Appointed day for the repeal of the Coastguard Act 1925 s 2 is 31 October 2009: SI 2009/1167.

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58. Wreck commissioners.

The Lord Chancellor¹ may appoint such number of persons as he thinks fit to be wreck commissioners and may remove any wreck commissioners appointed by him².

A wreck commissioner must vacate his office on the day on which he attains the age of 70 years³.

There must be paid to any wreck commissioner such remuneration, out of money provided by Parliament, as the Lord Chancellor may with the consent of the Treasury determine⁴; and there must be paid to any assessor appointed under the Merchant Shipping Act 1995 such remuneration, out of money provided by Parliament, as the Lord Chancellor may with the consent of the Treasury determine⁵.

1 As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq.

2 Merchant Shipping Act 1995 s 297(1). The Lord Chancellor's function under s 297(1) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. However, any appointment to the office of wreck commissioner in exercise of the function under the Merchant Shipping Act 1995 s 297(1) must be made (by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 3) in accordance with ss 85-93, 96: see **COURTS**.

The Lord Chancellor may remove a wreck commissioner from office only with the concurrence of the Lord Chief Justice of England and Wales or (if the commissioner was appointed to act in Northern Ireland) the Lord Chief Justice of Northern Ireland: Merchant Shipping Act 1995 s 297(3A) (added by the Constitutional Reform Act 2005 s 15(1), Sch 4 Pt 1 para 239). As to the appointment of a person to act as wreck commissioner in Northern Ireland see the Merchant Shipping Act 1995 s 297(3).

As to the function of the coastguard in relation to wrecks see PARA 987 et seq.

3 Merchant Shipping Act 1995 s 297(2). However, s 297(2) is subject to the Judicial Pensions and Retirement Act 1993 s 26(4)-(6) (power to authorise continuance in office up to the age of 75 years) (see **COURTS** vol 10 (Reissue) PARA 535): see the Merchant Shipping Act 1995 s 297(2).

4 Merchant Shipping Act 1995 s 297(4). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 Merchant Shipping Act 1995 s 297(5).

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59. The receiver of wreck.

The receiver of wreck investigates the ownership of items found in or on the shores of the sea or any tidal water¹.

¹ As to the receiver of wreck see PARA 988. As to the function of the coastguard in relation to wrecks see PARA 987 et seq.

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60. Mercantile marine superintendents.

Under the Merchant Shipping Act 1995, there continue to be officers known as mercantile marine superintendents¹. They are appointed, and may be removed, by the Secretary of State². Mercantile marine superintendents exercise the functions conferred on superintendents by the Merchant Shipping Act 1995³.

1 Merchant Shipping Act 1995 s 296(1). In the Merchant Shipping Act 1995, unless the context otherwise requires, 'superintendent' means a mercantile marine superintendent appointed under s 296: s 313(1).

2 Merchant Shipping Act 1995 s 296(2). As to the Secretary of State see PARA 38.

3 Merchant Shipping Act 1995 s 296(3).

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61. Registrar General of Shipping and Seamen.

Under the Merchant Shipping Act 1995, there continues to be an officer known as the Registrar General of Shipping and Seaman¹. He is appointed, and may be removed, by the Secretary of State²; and he must exercise such functions as are conferred on him by the Merchant Shipping Act 1995 and must keep such records and perform such other duties as the Secretary of State may direct³.

The Secretary of State may appoint and remove persons to perform on behalf of the Registrar General of Shipping and Seamen such of his functions⁴ as the Secretary of State or the Registrar General of Shipping and Seamen may direct⁵.

1 Merchant Shipping Act 1995 s 295(1).

2 Merchant Shipping Act 1995 s 295(2). As to the Secretary of State see PARA 38.

3 Merchant Shipping Act 1995 s 295(3). As to the Secretary of State's power to give directions under the Merchant Shipping Act 1995 see PARA 41.

4 I.e other than the functions of the Registrar General of Shipping and Seamen as registrar under the Merchant Shipping Act 1995 Pt II (ss 8-23) (see PARA 237 et seq): see s 295(5).

5 Merchant Shipping Act 1995 s 295(4), (5).

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(vi) General Financial Provisions under the Merchant Shipping Act 1995

62. Power to make regulations prescribing fees.

The Secretary of State¹ may, with the consent of the Treasury², make regulations³ prescribing fees to be charged in respect of either the issue or recording in pursuance of the Merchant Shipping Act 1995 of any certificate, licence or other document, or the doing of any thing in pursuance of that Act⁴.

In the case of fees for the measurement of a ship's tonnage⁵ the fees may be prescribed as maximum fees⁶.

All fees received by the Secretary of State under the Merchant Shipping Act 1995 must be paid into the Consolidated Fund⁷.

1 As to the Secretary of State see PARA 38.

2 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

3 As to the Secretary of State's power to make subordinate legislation, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations, see PARA 41.

4 Merchant Shipping Act 1995 s 302(1). In exercise of the power so conferred, the Secretary of State has made the Merchant Shipping (Fees) Regulations 2006, SI 2006/2055 (amended by SI 2006/3225); and the Merchant Shipping (Fees) (Amendment) Regulations 2006, SI 2006/3225. The Merchant Shipping (Fees) Regulations 2006, SI 2006/2055 came into force on 11 September 2006 (see reg 1); and they specify (or allow to be determined) the fees payable in respect of the following services or other functions (see reg 3):

- 31 (1) surveys, inspections and applications for exemption (see Sch 1 Pt 1);
- 32 (2) certificates of competency and examinations for officers (see Sch 1 Pt 2);
- 33 (3) miscellaneous examinations and other certificates (see Sch 1 Pt 3);
- 34 (4) certificates of equivalent competency (see Sch 1 Pt 4);
- 35 (5) boatmasters' licences and certificates (see Sch 1 Pt 5 (substituted by SI 2006/3225));
- 36 (6) safe manning certificates (see the Merchant Shipping (Fees) Regulations 2006, SI 2006/2055, Sch 1 Pt 6);
- 37 (7) consideration of certain applications for exemption (see Sch 1 Pt 7);
- 38 (8) registration, transfer and mortgage of ships (other than fishing vessels) and related matters (see Sch 1 Pt 8);
- 39 (9) registration, transfer and mortgage of fishing vessels and related matters (see Sch 1 Pt 9);
- 40 (10) copies of, and extracts from, documents (see Sch 1 Pt 10);
- 41 (11) issue of seamen's documents (see Sch 1 Pt 11);
- 42 (12) compulsory insurance certificates (see Sch 1 Pt 12);

- 43 (13) additional charges (waiting time, attendance at unusual hours) (see Sch 1 Pt 13);
- 44 (14) waste management plans and exemptions (see Sch 1 Pt 14);
- 45 (15) exemption from manning requirements of strategic ships (see Sch 1 Pt 15).

As to the calculation of fees generally see reg 4; and as to payment for travel, subsistence and other expenses (whether included in the fee or not) see reg 5.

The Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, have also been made under the Merchant Shipping Act 1995 s 302(1) but only to the extent that references to the 'prescribed fee' in the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, Pt 2 (regs 5-26) (boatmaster's licences and boatmasters' certificates) are to the fee prescribed by the Secretary of State under the Merchant Shipping Act 1995 s 302 (see the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 5); and transitional provision is made therein to set fees for holders of Thames watermen's licences which were issued under the Port of London Act 1968 to make applications for a boatmaster's licence (see reg 33).

In exercise of the power conferred under the Merchant Shipping Act 1995 s 302, the Secretary of State also made the Oil Pollution (Compulsory Insurance) Regulations 1997, SI 1997/1820, reg 5 (revoked by SI 2006/2055); the Merchant Shipping (Small Workboats and Pilot Boats) Regulations 1998, SI 1998/1609, reg 2 (revoked by SI 2006/2055); and the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, Schedule para 15 (revoked by SI 2006/2055) but see now the Merchant Shipping (Fees) Regulations 2006, SI 2006/2055.

5 As to measurement of tonnage see PARA 248 et seq.

6 Merchant Shipping Act 1995 s 302(2).

7 Merchant Shipping Act 1995 s 302(3). As to payments to be made into the Consolidated Fund under the Merchant Shipping Act 1995 see PARA 63. As to the Consolidated Fund generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

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63. Payments to be made into the Consolidated Fund.

The following sums must be paid into the Consolidated Fund¹:

- 160 (1) all fees, charges and expenses payable in respect of the survey and measurement of ships²;
- 161 (2) any fees received by receivers of wrecks³;
- 162 (3) any sums received by the Secretary of State under the Merchant Shipping Act 1995 or which are, by any provision of it, required to be paid into the Consolidated Fund⁴.

All such fees⁵ must be paid at such time and in such manner as the Secretary of State directs⁶.

1 Merchant Shipping Act 1995 s 305(1). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; and **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

2 Merchant Shipping Act 1995 s 305(1)(a). As to the meaning of 'ship' see PARA 229. As to the survey and measurement of ships see PARA 276 et seq.

3 Merchant Shipping Act 1995 s 305(1)(b). As to receivers of wrecks see PARA 988.

4 Merchant Shipping Act 1995 s 305(1)(c).

5 Ie all fees mentioned in the Merchant Shipping Act 1995 s 305: see s 305(2).

6 Merchant Shipping Act 1995 s 305(2). As to the Secretary of State see PARA 38; and as to his power to give directions under the Merchant Shipping Act 1995 see PARA 41.

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64. Expenses charged on money provided by Parliament.

The following expenses and other amounts are payable out of money provided by Parliament:

- 163 (1) the expenses incurred by the Secretary of State¹ under the Merchant Shipping Act 1995²;
- 164 (2) the salaries, pensions, gratuities and allowances of surveyors of ships³, Departmental inspectors⁴ and superintendents⁵;
- 165 (3) the sums required for the contribution from the United Kingdom⁶ towards maintaining, in accordance with the Safety Convention⁷, a service in the North Atlantic for the study and observation of ice and for the ice patrol⁸;
- 166 (4) the expenses of obtaining depositions, reports and returns respecting wrecks and casualties⁹;
- 167 (5) such sums as the Secretary of State may in his discretion think fit to pay in respect of claims on account of the proceeds of wreck¹⁰;
- 168 (6) the expenses incurred in respect of receivers of wrecks¹¹ and the performance of their duties¹²;
- 169 (7) such expenses as the Secretary of State directs¹³ for:
- 5
 - 5. (a) establishing and maintaining on the coasts of the United Kingdom proper lifeboats with the necessary crews and equipment¹⁴;
 - 6. (b) affording assistance towards the preservation of life and property in cases of shipwreck and distress at sea¹⁵; or
 - 7. (c) rewarding the preservation of life in such cases¹⁶;
- 6
 - 170 (8) any other amounts which are by virtue of any provision of the Merchant Shipping Act 1995 payable out of money provided by Parliament¹⁷.

1 As to the Secretary of State see PARA 38.

2 Merchant Shipping Act 1995 s 304(1)(a).

3 As to the meaning of 'surveyor of ships' see PARA 46 note 13; and as to the meaning of 'ship' see PARA 229.

4 As to the meaning of 'Departmental inspector' see PARA 46 note 2.

5 Merchant Shipping Act 1995 s 304(1)(b). As to the meaning of 'superintendent' see PARA 60 note 1.

6 As to the meaning of 'United Kingdom' see PARA 17 note 3.

7 For these purposes, 'Safety Convention' means the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874) (as to which see PARA 8); Merchant Shipping Act 1995 s 304(2).

8 Merchant Shipping Act 1995 s 304(1)(c).

9 Merchant Shipping Act 1995 s 304(1)(d). As to wrecks etc generally see PARAS 122 et seq, 876 et seq.

10 Merchant Shipping Act 1995 s 304(1)(e).

11 As to receivers of wrecks see PARA 988.

- 12 Merchant Shipping Act 1995 s 304(1)(f).
- 13 As to the Secretary of State's power to give directions under the Merchant Shipping Act 1995 see PARA 41.
- 14 Merchant Shipping Act 1995 s 304(1)(g)(i).
- 15 Merchant Shipping Act 1995 s 304(1)(g)(ii).
- 16 Merchant Shipping Act 1995 s 304(1)(g)(iii).
- 17 Merchant Shipping Act 1995 s 304(1)(h).

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(vii) Funding of Maritime Services

65. In general.

Regulations made by the Secretary of State¹ under the Merchant Shipping Act 1995 in relation to the funding of maritime services² may make provision:

- 171 (1) for the Secretary of State to impose charges in order to recover costs incurred by him in connection with his maritime functions³;
- 172 (2) for charges relating to expenses payable out of the General Lighthouse Fund⁴ which may be recoverable otherwise than by the levying of general light dues⁵;
- 173 (3) with regard to ships⁶ in respect of which charges may be imposed⁷;
- 174 (4) with regard to the persons by whom charges are to be paid⁸.

Such regulations may impose a charge of a fixed amount or of an amount to be determined in accordance with the regulations, and may impose different charges in relation to ships of different descriptions or in different circumstances⁹. Supplementary provision is made giving powers to require such information as the collecting authority may reasonably require for the purposes of the regulations¹⁰ and with respect to the collection and recovery of charges¹¹.

The legislative competence of the National Assembly for Wales¹² does not extend to shipping generally, but it does have power to provide financial assistance for shipping services to, from or within Wales¹³.

1 As to the Secretary of State see PARA 38.

2 Under the Merchant Shipping Act 1995 s 302A, Sch 11A (see PARA 65 et seq): see Sch 11A para 14 (Sch 11A added by the Merchant Shipping and Maritime Security Act 1997 s 13, Sch 2 para 2). Regulations under the Merchant Shipping Act 1995 Sch 11A must be made by the Secretary of State with the consent of the Treasury (Sch 11A para 16(1) (as so added)); and must not be made unless a draft of them has been laid before, and approved by a resolution of, the House of Commons (Sch 11A para 16(2) (as so added)). Such regulations may include such transitional, incidental or supplementary provision as appears to the Secretary of State to be necessary or appropriate: Sch 11A para 14 (as so added). However, at the date at which this volume states the law, no such regulations had been made. As to the Secretary of State's power to make subordinate legislation under the Merchant Shipping Act 1995 generally see PARA 41. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

Any sums received in consequence of regulations under Sch 11A must be paid into the Consolidated Fund: Sch 11A para 15 (as so added). As to payments to be made into the Consolidated Fund under the Merchant Shipping Act 1995 see PARA 63. As to the Consolidated Fund generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

3 See the Merchant Shipping Act 1995 Sch 11A para 2; and PARA 66. As to the meaning of 'maritime functions' for these purposes see PARA 66.

4 As to the General Lighthouse Fund see PARA 1089 et seq.

5 See the Merchant Shipping Act 1995 Sch 11A paras 3, 12, 13; and PARA 67. For these purposes, 'general light dues' has the same meaning as in Pt VIII (ss 193-223) (as to which see PARA 1083): see Sch 11A para 1 (as added: see note 2).

6 As to the meaning of 'ship' see PARA 229.

7 See the Merchant Shipping Act 1995 Sch 11A para 4; and PARA 68.

8 See the Merchant Shipping Act 1995 Sch 11A para 5; and PARA 69.

9 See the Merchant Shipping Act 1995 Sch 11A para 6; and PARA 70.

10 See the Merchant Shipping Act 1995 Sch 11A para 7; and PARA 71. Supplementary provision is made in relation to the disclosure of information for the purpose of enabling or assisting the Secretary of State to perform his functions under the regulations: see Sch 11A para 8; and PARA 71.

11 See the Merchant Shipping Act 1995 Sch 11A paras 9, 10, 13; and PARAS 67, 72. Supplementary provision is made allowing distress to be levied and for the disposal of any ship, goods, equipment or other thing on which distress is levied in circumstances where the owner or master has failed to pay charges due: see Sch 11A para 11; and PARA 72.

12 As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

13 See the Government of Wales Act 2006 s 108(3)-(5), Sch 7 para 10 (amended by SI 2007/2143); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the meaning of 'Wales' see PARA 17 note 2.

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66. Charges in respect of maritime matters.

Regulations made under the Merchant Shipping Act 1995 in relation to the funding of maritime services¹ may make provision imposing charges for the purpose of recovering the whole or a part of the costs incurred by the Secretary of State² in connection with his maritime functions³. For these purposes, 'maritime functions' means:

- 175 (1) functions conferred by or under any provision of the Merchant Shipping Act 1995 (apart from the provisions relating to registration⁴ and to lighthouse authorities)⁵;
- 176 (2) functions under any international agreement⁶ relating to the safety of ships, to the prevention of pollution from ships, or to living and working conditions on board ships⁷; and
- 177 (3) other functions relating to the promotion of the safety of ships⁸.

1 The regulations under the Merchant Shipping Act 1995 s 302A, Sch 11A: see Sch 11A para 2(1) (Sch 11A added by the Merchant Shipping and Maritime Security Act 1997 s 13, Sch 2 para 2). As to the making of regulations under the Merchant Shipping Act 1995 Sch 11A see PARA 65; and as to further provision which may be made by such regulations see PARA 67 et seq. At the date at which this volume states the law, no such regulations had been made.

2 As to the Secretary of State see PARA 38.

3 Merchant Shipping Act 1995 Sch 11A para 2(1) (as added: see note 1).

4 The apart from the Merchant Shipping Act 1995 Pt II (ss 8-23) (registration) (as to which see PARA 237 et seq): see Sch 11A para 2(2)(a) (as added: see note 1).

5 Merchant Shipping Act 1995 Sch 11A para 2(2)(a) (as added: see note 1). The text refers to the provisions of Pt VIII (ss 193-223) (lighthouses) (as to which see PARA 1068 et seq): see Sch 11A para 2(2)(a) (as so added).

6 As to international conventions and other agreements see PARA 8 et seq.

7 Merchant Shipping Act 1995 Sch 11A para 2(2)(b) (as added: see note 1).

8 Merchant Shipping Act 1995 Sch 11A para 2(2)(c) (as added: see note 1).

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67. Charges relating to expenses payable out of the General Lighthouse Fund.

If:

- 178 (1) any Community obligation¹; or
- 179 (2) any international agreement made between any three or more countries including the Republic of Ireland and ratified by the United Kingdom²,

requires the United Kingdom to provide for any of the costs incurred by General Lighthouse Authorities³ in respect of lighthouses, buoys and beacons⁴ to be recovered otherwise than by means of the levying of general light dues⁵, regulations made under the Merchant Shipping Act 1995 in relation to the funding of maritime services⁶ may make provision imposing charges for the purposes of recovering all or any part of the costs required to be so recovered⁷.

If such regulations make any such provision as to charges for expenses payable out of the General Lighthouse Fund⁸, regulations may also⁹:

- 180 (a) provide for payments which, apart from the regulations, would fall to be made out of the General Lighthouse Fund to be made by the Secretary of State¹⁰ out of money provided by Parliament¹¹;
- 181 (b) provide for amounts which, apart from the regulations, would fall to be paid into the General Lighthouse Fund¹² to be paid by the Secretary of State into the Consolidated Fund¹³;
- 182 (c) provide for the payment out of money provided by Parliament into the General Lighthouse Fund of amounts representing the whole or part of any charges imposed by such regulations¹⁴; and
- 183 (d) make such amendments, repeals or other modifications of any of the provisions of the Merchant Shipping Act 1995 relating to the General Lighthouse Fund or general light dues as appear to the Secretary of State to be necessary or expedient in consequence of, or in connection with, the provision made by virtue of the provisions allowing charges to be imposed by such regulations¹⁵ or head (a), (b) or (c) above¹⁶.

If such regulations confer on General Lighthouse Authorities functions relating to the collection and recovery of charges¹⁷, regulations made in relation to the funding of maritime services¹⁸ may also provide for the making by the Secretary of State to each general lighthouse authority out of money provided by Parliament of payments in respect of expenses incurred by that authority in connection with the collection or recovery of charges¹⁹.

1 Merchant Shipping Act 1995 s 302A, Sch 11A para 3(1)(a) (Sch 11A added by the Merchant Shipping and Maritime Security Act 1997 s 13, Sch 2).

In the European Communities Act 1972, 'Community obligation' means any obligation created or arising by or under the Treaties (as defined by s 1(2)), whether an enforceable obligation or not: see s 1(2), Sch 1 Pt II. As to measures which may bind the United Kingdom under the European Treaties see PARA 15 et seq.

2 Merchant Shipping Act 1995 Sch 11A para 3(1)(b) (as added: see note 1). As to the meaning of 'United Kingdom' see PARA 17 note 3. As to international conventions and other agreements see PARA 8 et seq.

3 For these purposes, 'general lighthouse authority' has the same meaning as in the Merchant Shipping Act 1995 Pt VIII (ss 193-223) (as to which see PARA 1068): see Sch 11A para 1 (as added: see note 1).

4 For these purposes, 'buoys and beacons' includes equipment which is intended as an aid to the navigation of ships and, subject to that, expressions used in the Merchant Shipping Act 1995 Sch 11A para 3 and in Pt VIII (see PARA 1068 et seq) have the same meaning as in Pt VIII: see Sch 11A para 3(2) (as added: see note 1). Accordingly, as to the meaning of 'lighthouse' see PARA 1068 note 1.

5 Ie in accordance with the Merchant Shipping Act 1995 s 205 (see PARA 1083), as it has effect on 19 March 1997: see Sch 11A para 3(1) (as added: see note 1). As to the meaning of 'general light dues' for these purposes see PARA 65 note 5.

6 Ie regulations under the Merchant Shipping Act 1995 Sch 11A: see Sch 11A para 3(1) (as added: see note 1). As to the making of regulations under the Merchant Shipping Act 1995 Sch 11A see PARA 65; and as to further provision which may be made by such regulations see PARAS 66, 68 et seq. At the date at which this volume states the law, no such regulations had been made.

7 Merchant Shipping Act 1995 Sch 11A para 3(1) (as added: see note 1).

8 Ie if regulations under the Merchant Shipping Act 1995 Sch 11A make any provision by virtue of Sch 11A para 3 (see the text and notes 1-7): see Sch 11A para 12 (as added: see note 1). As to the General Lighthouse Fund see PARA 1089 et seq.

9 Merchant Shipping Act 1995 Sch 11A para 12 (as added: see note 1).

10 As to the Secretary of State see PARA 38.

11 Merchant Shipping Act 1995 Sch 11A para 12(a) (as added: see note 1).

12 Ie other than general light dues levied in accordance with the Merchant Shipping Act 1995 s 205 (see PARA 1083): see Sch 11A para 12(b) (as added: see note 1).

13 Merchant Shipping Act 1995 Sch 11A para 12(b) (as added: see note 1). As to payments to be made into the Consolidated Fund under the Merchant Shipping Act 1995 see PARA 63. As to the Consolidated Fund generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

14 Merchant Shipping Act 1995 Sch 11A para 12(c) (as added: see note 1). The text refers to charges imposed by regulations made under Sch 11A by virtue of Sch 11A para 3 (see the text and notes 1-7): see Sch 11A para 12(c) (as so added).

15 Ie charges imposed by regulations made under the Merchant Shipping Act 1995 Sch 11A by virtue of Sch 11A para 3 (see the text and notes 1-7): see Sch 11A para 12(d) (as added: see note 1).

16 Merchant Shipping Act 1995 Sch 11A para 12(d) (as added: see note 1).

17 Ie if regulations under the Merchant Shipping Act 1995 Sch 11A make any provision by virtue of Sch 11A para 9(2) (see PARA 72): see Sch 11A para 13 (as added: see note 1).

18 Ie regulations under the Merchant Shipping Act 1995 Sch 11A: see Sch 11A para 13 (as added: see note 1).

19 Merchant Shipping Act 1995 Sch 11A para 13 (as added: see note 1).

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68. Ships in respect of which charges may be imposed.

Regulations made under the Merchant Shipping Act 1995 in relation to the funding of maritime services¹ may not require a charge to be paid except in respect of:

- 184 (1) a ship² which has entered a port³ in the United Kingdom⁴;
- 185 (2) a ship which is anchored off a port in the United Kingdom⁵; or
- 186 (3) a ship which is anchored within 500 metres of an installation⁶ which is in United Kingdom waters or a part of the sea specified⁷ for purposes which relate to the protection and preservation of the marine environment⁸.

Nothing in any such regulations is to be construed as requiring a charge to be paid in respect of a qualifying foreign ship⁹ which is exercising the right of innocent passage¹⁰, or the right of transit passage¹¹ through straits used for international navigation¹², except to the extent that international law allows such a charge to be imposed¹³.

Subject to these restrictions¹⁴, the regulations may impose a charge in respect of such description of ship as may be prescribed¹⁵. In particular:

- 187 (a) regulations may impose a charge in respect of a ship even though no service has been provided or function exercised in the case of that ship¹⁶; and
- 188 (b) regulations may provide that no charge is imposed in respect of a ship which does not exceed a prescribed tonnage or does not exceed a prescribed length¹⁷.

1 The regulations under the Merchant Shipping Act 1995 s 302A, Sch 11A: see Sch 11A para 4(1) (Sch 11A added by the Merchant Shipping and Maritime Security Act 1997 s 13, Sch 2 para 2). As to the making of regulations under the Merchant Shipping Act 1995 Sch 11A see PARA 65; and as to further provision which may be made by such regulations see PARAS 66, 67, 69 et seq. At the date at which this volume states the law, no such regulations had been made.

2 As to the meaning of 'ship' see PARA 229.

3 As to the meaning of 'port' see PARA 46 note 12.

4 Merchant Shipping Act 1995 Sch 11A para 4(1)(a) (as added: see note 1). As to the meaning of 'United Kingdom' see PARA 17 note 3.

For these purposes, the circumstances in which a ship is to be regarded as entering a port in the United Kingdom include circumstances in which the ship enters any United Kingdom waters which are regulated or managed by a harbour authority: see Sch 11A para 4(5) (as so added). In the Merchant Shipping Act 1995, unless the context otherwise requires, 'harbour authority' means, in relation to a harbour, the person who is the statutory harbour authority for the harbour or (if there is no statutory harbour authority for the harbour) the person (if any) who is the proprietor of the harbour or who is entrusted with the function of managing, maintaining or improving the harbour: s 313(1) (definition substituted by the Merchant Shipping and Maritime Security Act 1997 s 29(1), Sch 6 para 19(2)(a)). 'Statutory harbour authority' means, in relation to Great Britain, a harbour authority within the meaning of the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 619); Merchant Shipping Act 1995 s 313(1) (definition substituted by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 19(2)(d)). As to the meaning of 'Great Britain' see PARA 17 note 3; as to the meaning of 'harbour' see PARA 49 note 5; and as to the meaning of 'United Kingdom waters' see PARA 48 note 10.

5 Merchant Shipping Act 1995 Sch 11A para 4(1)(b) (as added: see note 1).

6 For these purposes, 'installation' means an installation which is an offshore installation within the meaning of the Mineral Workings (Offshore Installations) Act 1971 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1684) or is to be taken to be an installation for the purposes of the Petroleum Act 1987 ss 21-23 (safety zones) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1680): see the Merchant Shipping Act 1995 Sch 11A para 4(6) (as added: see note 1).

7 le a part of the sea specified by virtue of the Merchant Shipping Act 1995 s 129(2)(b) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 362): see Sch 11A para 4(1)(c) (as added: see note 1).

8 Merchant Shipping Act 1995 Sch 11A para 4(1)(c) (as added: see note 1).

9 As to the meaning of 'qualifying foreign ship' see PARA 19.

10 For these purposes, 'right of innocent passage' is to be construed in accordance with the United Nations Convention on the Law of the Sea 1982 (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941) (as to which see PARA 10): see the Merchant Shipping Act 1995 s 313(2A) (added by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 19(1), (3)). As to innocent passage generally see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 133.

11 For these purposes, 'right of transit passage' is to be construed in accordance with the United Nations Convention on the Law of the Sea 1982 (as to which see note 10): see the Merchant Shipping Act 1995 s 313(2A) (as added: see note 10). As to transit passage generally see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 143.

12 For these purposes, 'straits used for international navigation' is to be construed in accordance with the United Nations Convention on the Law of the Sea 1982 (see note 10): see the Merchant Shipping Act 1995 s 313(2A) (as added: see note 10).

13 Merchant Shipping Act 1995 Sch 11A para 4(2) (as added: see note 1).

14 le subject to the Merchant Shipping Act 1995 Sch 11A para 4(1), (2) (see the text and notes 1-13): see Sch 11A para 4(3) (as added: see note 1).

15 Merchant Shipping Act 1995 Sch 11A para 4(3) (as added: see note 1). For these purposes, 'prescribe' means prescribe by regulations: see Sch 11A para 1 (as so added).

16 Merchant Shipping Act 1995 Sch 11A para 4(4)(a) (as added: see note 1).

17 Merchant Shipping Act 1995 Sch 11A para 4(4)(b) (as added: see note 1).

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69. Persons by whom charges are to be paid.

Regulations made under the Merchant Shipping Act 1995 in relation to the funding of maritime services¹ may not require a charge to be paid in respect of a ship² by a person who is not:

- 189 (1) the owner of the ship³;
- 190 (2) the person registered⁴ as the owner of the ship⁵;
- 191 (3) the operator of the ship⁶;
- 192 (4) the manager of the ship⁷;
- 193 (5) the charterer of the ship⁸; or
- 194 (6) the agent of a person mentioned in any of heads (1) to (5) above⁹.

Subject to these restrictions¹⁰, charges imposed by the regulations are payable by such persons as may be prescribed¹¹.

1 The regulations under the Merchant Shipping Act 1995 s 302A, Sch 11A: see Sch 11A para 5(1) (Sch 11A added by the Merchant Shipping and Maritime Security Act 1997 s 13, Sch 2 para 2). As to the making of regulations under the Merchant Shipping Act 1995 Sch 11A see PARA 65; and as to further provision which may be made by such regulations see PARAS 66-68, 70 et seq. At the date at which this volume states the law, no such regulations had been made.

2 As to the meaning of 'ship' see PARA 229.

3 Merchant Shipping Act 1995 Sch 11A para 5(1)(a) (as added: see note 1).

4 As to the meaning of 'registered' see PARA 254 note 2.

5 Merchant Shipping Act 1995 Sch 11A para 5(1)(b) (as added: see note 1).

6 Merchant Shipping Act 1995 Sch 11A para 5(1)(c) (as added: see note 1).

7 Merchant Shipping Act 1995 Sch 11A para 5(1)(d) (as added: see note 1).

8 Merchant Shipping Act 1995 Sch 11A para 5(1)(e) (as added: see note 1).

9 Merchant Shipping Act 1995 Sch 11A para 5(1)(f) (as added: see note 1).

10 The subject to the Merchant Shipping Act 1995 Sch 11A para 5(1) (see the text and notes 1-9): see Sch 11A para 5(2) (as added: see note 1).

11 Merchant Shipping Act 1995 Sch 11A para 5(2) (as added: see note 1). For these purposes, 'prescribe' means prescribe by regulations: see Sch 11A para 1 (as so added).

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70. Amount of charges.

Regulations made under the Merchant Shipping Act 1995 in relation to the funding of maritime services¹ may impose a charge of a fixed amount or of an amount determined in accordance with the regulations, and may impose different charges in relation to ships² of different descriptions or in different circumstances³.

Such regulations may in particular impose in respect of a ship a charge whose amount depends on⁴:

- 195 (1) whether action has been or is being taken with a view to enforcing international shipping standards in the case of that ship or with a view to preventing, reducing or minimising the effects of pollution from that ship⁵, and (if any such action has been or is being so taken) the nature of the action⁶;
- 196 (2) the tonnage or length of the ship⁷.

1 The regulations under the Merchant Shipping Act 1995 s 302A, Sch 11A: see Sch 11A para 6(1) (Sch 11A added by the Merchant Shipping and Maritime Security Act 1997 s 13, Sch 2 para 2). As to the making of regulations under the Merchant Shipping Act 1995 Sch 11A see PARA 65; and as to further provision which may be made by such regulations see PARAS 66-69, 71 et seq. At the date at which this volume states the law, no such regulations had been made.

2 As to the meaning of 'ship' see PARA 229.

3 Merchant Shipping Act 1995 Sch 11A para 6(1) (as added: see note 1).

4 Merchant Shipping Act 1995 Sch 11A para 6(2), (3) (as added: see note 1).

5 Merchant Shipping Act 1995 Sch 11A para 6(2)(a) (as added: see note 1).

6 Merchant Shipping Act 1995 Sch 11A para 6(2)(b) (as added: see note 1).

7 Merchant Shipping Act 1995 Sch 11A para 6(3) (as added: see note 1).

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71. Powers to require information and to disclose information.

Regulations made under the Merchant Shipping Act 1995 in relation to the funding of maritime services¹ may include provision requiring any relevant authority² or any person who is or may be liable to pay charges under the regulations in respect of a ship³ to provide any collecting authority⁴ with such information as the collecting authority may reasonably require for the purposes of the regulations⁵.

No obligation as to secrecy or other restriction on the disclosure of information, whether imposed by statute or otherwise, prevents a Minister of the Crown⁶ or a Northern Ireland department from disclosing:

- 197 (1) to the Secretary of State⁷; or
- 198 (2) to a person appointed by the Secretary of State to collect charges under regulations so made in relation to the funding of maritime services⁸,

information for the purpose of enabling or assisting the Secretary of State to perform his functions under the regulations⁹. Information so obtained by any person must not be disclosed by him to any other person except where the disclosure is made either to a person falling within head (1) or head (2) above or for the purposes of any legal proceedings arising out of the regulations¹⁰.

1 The regulations under the Merchant Shipping Act 1995 s 302A, Sch 11A: see Sch 11A para 7(1) (Sch 11A added by the Merchant Shipping and Maritime Security Act 1997 s 13, Sch 2 para 2). As to the making of regulations under the Merchant Shipping Act 1995 Sch 11A see PARA 65; and as to further provision which may be made by such regulations see PARAS 66-70, 72 et seq. At the date at which this volume states the law, no such regulations had been made.

2 For these purposes, 'relevant authority' means a harbour authority, the Commissioners of Revenue and Customs and a conservancy authority: see the Merchant Shipping Act 1995 Sch 11A para 7(2) (Sch 11A as added (see note 1); Sch 11A para 7(2) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). In the Merchant Shipping Act 1995, unless the context otherwise requires, 'conservancy authority' includes all persons entrusted with the function of conserving, maintaining or improving the navigation of a tidal water, as defined in s 255 (see PARA 987 note 6): s 313(1). As to the meaning of 'harbour authority' see PARA 68 note 4. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 900-933.

3 As to the meaning of 'ship' see PARA 229.

4 For these purposes, 'collecting authority' means the Secretary of State, a Departmental officer and a general lighthouse authority: see the Merchant Shipping Act 1995 Sch 11A para 7(2) (as added: see note 1). As to the meaning of 'departmental officer' see PARA 47 note 11; and as to the meaning of 'general lighthouse authority' for these purposes see PARA 67 note 3. As to the Secretary of State see PARA 38.

5 Merchant Shipping Act 1995 Sch 11A para 7(1) (as added: see note 1).

6 In the Merchant Shipping Act 1995, unless the context otherwise requires, 'Minister of the Crown' has the same meaning as in the Ministers of the Crown Act 1975 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 363); Merchant Shipping Act 1995 s 313(1) (definition added by the Merchant Shipping and Maritime Security Act 1997 s 29(1), Sch 6 para 19(1), (2)(b)).

7 Merchant Shipping Act 1995 Sch 11A para 8(1)(a) (as added: see note 1).

8 Merchant Shipping Act 1995 Sch 11A para 8(1)(b) (as added: see note 1). The text refers to regulations made under Sch 11A (see note 1): see Sch 11A para 8(1)(b) (as so added).

9 Merchant Shipping Act 1995 Sch 11A para 8(1) (as added: see note 1).

10 Merchant Shipping Act 1995 Sch 11A para 8(2) (as added: see note 1).

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72. Collection and recovery etc.

Regulations made under the Merchant Shipping Act 1995 in relation to the funding of maritime services¹ may make provision:

- 199 (1) with respect to the collection and recovery of charges, and for charges which fall due under the regulations but which are not paid to carry interest²;
- 200 (2) for appeals against decisions that charges are due in respect of ships³;
- 201 (3) for authorising distress to be levied on any ship in respect of which the owner or master⁴ has failed to pay charges due under the regulations, and on any goods, equipment or other thing belonging to, or on board, the ship⁵;
- 202 (4) for the disposal of any ship, goods, equipment or other thing on which distress is levied in accordance with the regulations⁶; and
- 203 (5) for the imposition and recovery of costs, charges, expenses and fees in connection with anything done under regulations made by virtue of head (3) or (4) above⁷.

1 The regulations under the Merchant Shipping Act 1995 s 302A, Sch 11A: see Sch 11A para 9(1) (Sch 11A added by the Merchant Shipping and Maritime Security Act 1997 s 13, Sch 2 para 2). As to the making of regulations under the Merchant Shipping Act 1995 Sch 11A see PARA 65; and as to further provision which may be made by such regulations see PARAS 66-71. At the date at which this volume states the law, no such regulations had been made.

2 Merchant Shipping Act 1995 Sch 11A para 9(1) (as added: see note 1).

Regulations so made by virtue of Sch 11A para 9(1) may in particular confer on general lighthouse authorities functions relating to the collection and recovery of charges: Sch 11A para 9(2) (as so added). If regulations under the Merchant Shipping Act 1995 Sch 11A make any such provision, such regulations may also provide for the making by the Secretary of State to each general lighthouse authority out of money provided by Parliament of payments in respect of expenses incurred by that authority in connection with the collection or recovery of charges: see Sch 11A para 13; and PARA 67. As to the meaning of 'general lighthouse authority' for these purposes see PARA 67 note 3. As to the Secretary of State see PARA 38.

3 Merchant Shipping Act 1995 Sch 11A para 10 (as added: see note 1). As to the meaning of 'ship' see PARA 229.

4 As to the meaning of 'master' see PARA 424.

5 Merchant Shipping Act 1995 Sch 11A para 11(a) (as added: see note 1).

6 Merchant Shipping Act 1995 Sch 11A para 11(b) (as added: see note 1).

7 Merchant Shipping Act 1995 Sch 11A para 11(c) (as added: see note 1).

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(viii) Service of Documents under the Merchant Shipping Act 1995

73. Service of documents.

Any document authorised or required to be served on any person may be served on that person by delivering it to him, by leaving it at his proper address or by sending it by post to him at his proper address¹.

Any such document required to be served on the master² of a ship³ may be served:

- 204 (1) where there is a master, by leaving it for him on board the ship with the person appearing to be in command or charge of the ship⁴;
- 205 (2) where there is no master, on the managing owner of the ship or, if there is no managing owner, on any agent of the owner or, where no such agent is known or can be found, by leaving a copy of the document fixed to the mast of the ship⁵.

Any document authorised or required to be served on any person may:

- 206 (a) in the case of a body corporate, be served on the secretary or clerk of that body⁶;
- 207 (b) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business⁷.

Any notice authorised or required by or under the Merchant Shipping Act 1995 provisions relating to the registration of ships in the United Kingdom⁸ to be served on the Secretary of State⁹ may be served by post¹⁰.

Any notice authorised by the provisions relating to improvement notices and prohibition notices¹¹ to be given to an inspector¹² may be given by delivering it to him or by leaving it at, or sending it by post to, his office¹³.

Any document authorised or required by or under any enactment to be served on the registered¹⁴ owner of a United Kingdom ship¹⁵ is treated as duly served on him if served on such persons, in such circumstances and by such method, as may be specified in registration regulations¹⁶.

The proper address of any person on whom any document is to be served is¹⁷ his last known address¹⁸, except that:

- 208 (i) in the case of a body corporate or its secretary or clerk, it is the address of the registered or principal office of that body¹⁹;
- 209 (ii) in the case of a partnership or a person having the control or management of the partnership business, it is the principal office of the partnership²⁰;

and, for these purposes, the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office in the United Kingdom²¹.

If the person to be served with any notice has, whether in pursuance of the registration regulations or otherwise, specified an address in the United Kingdom other than his proper address²² as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address is also treated²³ as his proper address²⁴.

A letter containing a notice to be served on any person²⁵ or a notice authorised or required to be served under registration regulations on a representative person²⁶ is deemed²⁷ to be properly addressed if it is addressed to that person at the address for the time being recorded in relation to him in the register²⁸; and a letter containing any other notice under registration regulations is deemed to be properly addressed if it is addressed to the last known address of the person to be served, whether of his residence or of a place where he carries on business²⁹.

1 Merchant Shipping Act 1995 s 291(1).

2 As to the meaning of 'master' see PARA 424.

3 As to the meaning of 'ship' see PARA 229.

4 Merchant Shipping Act 1995 s 291(2)(a).

5 Merchant Shipping Act 1995 s 291(2)(b).

6 Merchant Shipping Act 1995 s 291(3)(a).

7 Merchant Shipping Act 1995 s 291(3)(b).

8 I.e. the Merchant Shipping Act 1995 Pt II (ss 8-23) (see PARA 237 et seq): see s 291(4). As to the meaning of 'United Kingdom' see PARA 17 note 3.

9 As to the Secretary of State see PARA 38.

10 Merchant Shipping Act 1995 s 291(4).

11 I.e. authorised by the Merchant Shipping Act 1995 s 261 (see PARA 50), s 262 (see PARA 51), s 263 (see PARA 52) or s 264 (see PARA 53): see s 291(5).

12 As to the powers of inspectors appointed under the Merchant Shipping Act 1995 s 256 see PARA 46.

13 Merchant Shipping Act 1995 s 291(5).

14 As to the meaning of 'registered' for these purposes see PARA 254 note 2.

15 As to the meaning of 'United Kingdom ship' see PARA 230.

16 Merchant Shipping Act 1995 s 291(6). As to the meaning of 'registration regulations' see PARA 247.

17 I.e. for the purposes of the Merchant Shipping Act 1995 s 291 and of the Interpretation Act 1978 s 7 (service of documents by post) (see **STATUTES** vol 44(1) (Reissue) PARA 1388) in its application to the Merchant Shipping Act 1995 s 291: see s 291(7).

18 Merchant Shipping Act 1995 s 291(7).

19 Merchant Shipping Act 1995 s 291(7)(a).

20 Merchant Shipping Act 1995 s 291(7)(b).

21 Merchant Shipping Act 1995 s 291(7).

22 I.e. within the meaning of the Merchant Shipping Act 1995 s 291(7) (see the text and notes 17-21): see s 291(8).

23 I.e. for the purposes of the Merchant Shipping Act 1995 s 291 and of the Interpretation Act 1978 s 7 (service of documents by post) (see **STATUTES** vol 44(1) (Reissue) PARA 1388): see s 291(8).

24 Merchant Shipping Act 1995 s 291(8).

- 25 le under the Merchant Shipping Act 1995 s 291(6) (see the text and notes 14-16): see s 291(9).
- 26 le within the meaning of the registration regulations (see PARA 267): see s 291(9).
- 27 le for the purposes of the Interpretation Act 1978 s 7 (service of documents by post) (see **STATUTES** vol 44(1) (Reissue) PARA 1388): see s 291(9).
- 28 Merchant Shipping Act 1995 s 291(9). As to the meaning of 'register' see PARA 254 note 2.
- 29 Merchant Shipping Act 1995 s 291(9).

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(4) SHIPPING AND TRADING INTERESTS

(i) Protection of Shipping etc Interests from Foreign Action

74. Power to regulate the provision of shipping services in the event of foreign action.

The Secretary of State¹ may exercise his powers to regulate the provision of shipping services² if he is satisfied that:

- 210 (1) a foreign government³; or
- 211 (2) persons purporting to exercise governing authority over any territory outside the United Kingdom⁴; or
- 212 (3) any agency or authority of a foreign government or of such persons⁵,

has adopted, or proposes to adopt, measures or practices concerning or affecting any shipping services⁶ which:

- 213 (a) are damaging or threaten to damage the shipping or trading interests of the United Kingdom⁷; or
- 214 (b) are damaging or threaten to damage the shipping or trading interests of another state⁸,

and if, in the latter case, the Secretary of State is satisfied that such action⁹ would be in fulfilment of the obligations of the United Kingdom to that other state or would be appropriate in view of any arrangements made between Her Majesty's government and the government of that other state¹⁰.

The Secretary of State may by order¹¹ make provision for requiring persons in the United Kingdom carrying on any trade or business to provide the Secretary of State with all such information as he may require for the purpose of enabling him to determine what further action so to take¹² and to ensure compliance with any orders or directions so made or given¹³.

The Secretary of State may by order (a 'protective order') provide for¹⁴:

- 215 (i) regulating the provision of any shipping services and the rates, fares or other amounts which may or must be charged for providing those services¹⁵;
- 216 (ii) regulating¹⁶ the admission and departure of ships to and from the United Kingdom ports¹⁷, the nature of the shipping services they may be used to provide (whether by reference to the cargoes or passengers they may carry or otherwise)¹⁸, and the loading or unloading of cargoes, the embarkation or disembarkation of passengers, or the doing of other things in connection with the provision of any shipping services¹⁹;
- 217 (iii) regulating the making and implementation of agreements (including charterparties) whose subject matter relates directly or indirectly to the provision of any shipping services, and requiring such agreements to be subject to the Secretary of State's approval in such cases as he may specify²⁰;

- 218 (iv) imposing charges in respect of ships which enter United Kingdom ports in connection with the provision of any shipping services²¹;
- 219 (v) imposing, in pursuance of any Community obligation²², such tax or duty payable by such persons and in such circumstances as the Secretary of State may specify²³.

Such an order may authorise the Secretary of State to give directions to any person for the purposes of the order²⁴.

Any order or direction so made or given²⁵ may be either general or special, and may be subject to such conditions or exceptions as the Secretary of State specifies (including conditions and exceptions operating by reference to the giving or withholding of his approval for any course of action)²⁶; and may be in terms that require compliance either generally or only in specified cases²⁷.

A recital in such an order²⁸ that the persons who have adopted, or propose to adopt, the measures or practices in question are such persons as are mentioned in head (1), (2), or (3) above is conclusive²⁹.

A protective order made under either head (iv) or head (v) above is referred to as a 'charging order'³⁰; and a charging order may³¹:

- 220 (A) apply to ships of any description specified in the order, and may apply in particular to ships registered in a specified country, or to ships carrying goods or cargoes of a specified description or providing any other specified shipping services³²;
- 221 (B) contain such provisions as appear to the Secretary of State expedient to enable the Commissioners for Revenue and Customs to collect any charge, tax or duty imposed by the order³³; and
- 222 (C) apply, subject to any modifications or exceptions specified in the order, any of the enactments for the time being in force relating to duties, whether for revenue or customs, chargeable on goods imported into the United Kingdom³⁴.

Any charge, tax or duty imposed by a charging order may be a fixed amount or an amount depending on the tonnage of the ship and is payable to the Secretary of State³⁵. Any sum received by the Secretary of State must be paid into the Consolidated Fund³⁶.

A charging order is not to be made except with the consent of the Treasury³⁷.

1 As to the Secretary of State see PARA 38.

2 I.e. the powers conferred by the Shipping and Trading Interests (Protection) Act 1995 s 1: see s 1(1). As to the meaning of 'shipping services' see note 6.

3 Shipping and Trading Interests (Protection) Act 1995 s 1(1)(a). For these purposes, 'foreign government' means the government of any state other than the United Kingdom: s 1(9)(a). As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Shipping and Trading Interests (Protection) Act 1995 s 1(1)(b). See note 5.

5 Shipping and Trading Interests (Protection) Act 1995 s 1(1)(c). For these purposes, references to an agency or authority of a foreign government, or of such persons as are mentioned in s 1(1)(b) (see head (2) in the text), include references to any undertaking appearing to the Secretary of State to be, or to be acting on behalf of, an undertaking which is in effect owned or controlled, directly or indirectly, by a state other than, or by a territory outside, the United Kingdom: s 1(9)(b).

6 For these purposes, 'shipping services' means services provided by means of ships, and includes the carriage of goods or passengers at sea, cable laying, dredging and services provided by offshore support vessels: Shipping and Trading Interests (Protection) Act 1995 s 1(9)(d). For these purposes, 'ship' includes every

description of vessel used in navigation: see the Merchant Shipping Act 1995 s 313(1); definition applied by virtue of the Shipping and Trading Interests (Protection) Act 1995 s 9(2). For the purposes of s 1 only, references to ships are to ships of any registration: s 1(9)(e).

7 Shipping and Trading Interests (Protection) Act 1995 s 1(1)(i). In a case falling within s 1(1)(i), a protective order (as to which see the text and notes 14-24) must specify the measures or practices which in the opinion of the Secretary of State are damaging or threaten to damage shipping or trading interests of the United Kingdom: s 1(4). As to the enforcement of such orders see PARA 1243.

8 Shipping and Trading Interests (Protection) Act 1995 s 1(1)(ii).

9 The action under the Shipping and Trading Interests (Protection) Act 1995 s 1: see s 1(1).

10 Shipping and Trading Interests (Protection) Act 1995 s 1(1).

11 The power to make an order under the Shipping and Trading Interests (Protection) Act 1995 s 1 is exercisable by statutory instrument (s 1(7)); but, before the Secretary of State makes such an order, he must consult such representatives of the shipping or trading interests of the United Kingdom, and such other persons, as appear to him appropriate (s 1(8)). As to Parliamentary control of such orders see PARA 75. At the date at which this volume states the law, no such order had been made. See note 7.

12 Shipping and Trading Interests (Protection) Act 1995 s 1(2)(a). The text refers to further action to be taken under s 1: see s 1(2)(a).

13 Shipping and Trading Interests (Protection) Act 1995 s 1(2)(b). The text refers to orders or directions made or given under s 1: see s 1(2)(b). As to orders which may authorise the Secretary of State to give directions under s 1 to any person for the purposes of the order see the text and note 24.

An order made under s 1 with the consent of the Commissioners for Revenue and Customs may provide for the enforcement and execution of any order or direction under s 1 by officers of Revenue and Customs: s 3(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). Officers of Revenue and Customs acting under any provision made under the Shipping and Trading Interests (Protection) Act 1995 s 3(1) have power to enter any premises or ship: s 3(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). The Customs and Excise Management Act 1979 s 65 (power to refuse or cancel clearance of a ship or an aircraft: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1023) applies as if the Shipping and Trading Interests (Protection) Act 1995 s 1, s 2 (as to which see the text and notes 30-37) and s 3 were contained in the Customs and Excise Management Act 1979: Shipping and Trading Interests (Protection) Act 1995 s 3(3). As to the Commissioners for Revenue and Customs, and the appointment of officers of Revenue and Customs, see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 900-933.

14 Shipping and Trading Interests (Protection) Act 1995 s 1(3). In the Shipping and Trading Interests (Protection) Act 1995, 'protective order' has the meaning given by s 1(3): see s 9(2).

15 Shipping and Trading Interests (Protection) Act 1995 s 1(3)(a).

16 For these purposes, 'regulating', except in relation to rates, fares or other amounts which may or must be charged as mentioned in the Shipping and Trading Interests (Protection) Act 1995 s 1(3)(a) (see head (i) in the text), includes imposing a prohibition: see s 1(3).

17 Shipping and Trading Interests (Protection) Act 1995 s 1(3)(b)(i). For these purposes, 'port' includes place: see the Merchant Shipping Act 1995 s 313(1); definition applied by virtue of the Shipping and Trading Interests (Protection) Act 1995 s 9(2). For the purposes of s 1 only, 'port' includes an offshore terminal; and references to entering or leaving a port include references to using or ceasing to use an offshore terminal: s 1(9)(c).

18 Shipping and Trading Interests (Protection) Act 1995 s 1(3)(b)(ii).

19 Shipping and Trading Interests (Protection) Act 1995 s 1(3)(b)(iii).

20 Shipping and Trading Interests (Protection) Act 1995 s 1(3)(c).

21 Shipping and Trading Interests (Protection) Act 1995 s 1(3)(d). See the text and notes 30-37.

22 As to the meaning of 'Community obligation' see PARA 67 note 1.

23 Shipping and Trading Interests (Protection) Act 1995 s 1(3)(e). See the text and notes 30-37.

24 Shipping and Trading Interests (Protection) Act 1995 s 1(5). Any power to give directions conferred by the Shipping and Trading Interests (Protection) Act 1995 includes power to vary or revoke directions so given: s 9(3).

25 le any order or direction made or given under the Shipping and Trading Interests (Protection) Act 1995 s 1: see s 1(6).

26 Shipping and Trading Interests (Protection) Act 1995 s 1(6)(a).

27 Shipping and Trading Interests (Protection) Act 1995 s 1(6)(b).

28 le an order under the Shipping and Trading Interests (Protection) Act 1995 s 1: see s 1(10).

29 Shipping and Trading Interests (Protection) Act 1995 s 1(10).

30 Shipping and Trading Interests (Protection) Act 1995 s 2(1).

31 le without prejudice to the Shipping and Trading Interests (Protection) Act 1995 s 1(6) (see the text and notes 25-27): see s 2(3).

32 Shipping and Trading Interests (Protection) Act 1995 s 2(3)(a).

33 Shipping and Trading Interests (Protection) Act 1995 s 2(3)(b) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)).

34 Shipping and Trading Interests (Protection) Act 1995 s 2(3)(c).

35 Shipping and Trading Interests (Protection) Act 1995 s 2(4). However, no charging order may authorise the Secretary of State to give directions to any person for the purpose of recovering any charge, tax or duty: s 2(2).

36 Shipping and Trading Interests (Protection) Act 1995 s 2(6). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; and **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

37 Shipping and Trading Interests (Protection) Act 1995 s 2(5). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/1. INTRODUCTION/(4) SHIPPING AND TRADING INTERESTS/(i) Protection of Shipping etc Interests from Foreign Action/75. Parliamentary control of orders to regulate the provision of shipping services in the event of foreign action.

75. Parliamentary control of orders to regulate the provision of shipping services in the event of foreign action.

No protective order¹ may be made unless a draft of it has been approved by resolution of each House of Parliament or unless it is declared in the order that it appears to the Secretary of State² that by reason of urgency it is necessary to make the order without a draft having been so approved³. A protective order made without a draft having been approved by resolution of each House of Parliament ceases to have effect at the expiration of a period of 28 days beginning with the date on which it was made⁴ unless before the expiration of that period it has been approved by resolution of each House of Parliament, but without prejudice to anything previously done, or to the making of a new order⁵. However, these restrictions⁶ do not apply to a protective order which is made for the purpose only of implementing any Community obligation⁷.

An order to regulate the provision of shipping services in the event of foreign action⁸ which is not a protective order is subject to annulment in pursuance of a resolution of either House of Parliament⁹. If such an order recites that it is made for the purpose only of implementing any Community obligation¹⁰, or that it is not a protective order, the recital is conclusive¹¹.

1 As to the meaning of 'protective order' see PARA 74.

2 As to the Secretary of State see PARA 38.

3 Shipping and Trading Interests (Protection) Act 1995 s 4(1).

4 In reckoning for the purposes of the Shipping and Trading Interests (Protection) Act 1995 s 4(2), any period of 28 days, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: see s 4(2).

5 Shipping and Trading Interests (Protection) Act 1995 s 4(2).

6 I.e. the provisions of the Shipping and Trading Interests (Protection) Act 1995 s 4(1), (2) (see the text and notes 1-5): see s 4(3).

7 Shipping and Trading Interests (Protection) Act 1995 s 4(3). As to the meaning of 'Community obligation' see PARA 67 note 1.

8 I.e. under the Shipping and Trading Interests (Protection) Act 1995 s 1 (see PARA 74): see s 4(4). As to the meaning of 'shipping services' for these purposes see PARA 74 note 6.

9 Shipping and Trading Interests (Protection) Act 1995 s 4(4).

10 I.e. recites that it is made as mentioned in the Shipping and Trading Interests (Protection) Act 1995 s 4(3) (see the text and notes 6-7): see s 4(5).

11 Shipping and Trading Interests (Protection) Act 1995 s 4(5).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/1. INTRODUCTION/(4) SHIPPING AND TRADING INTERESTS/(ii) Protection of Coastal Shipping Services/76. Power to prohibit provision of coastal shipping services which are not British-based.

(ii) Protection of Coastal Shipping Services

76. Power to prohibit provision of coastal shipping services which are not British-based.

The Secretary of State¹ may by order² provide for the provision of the following shipping services³ to be prohibited, except where such services are provided from one or more permanent places of business maintained in the British Islands⁴:

- 223 (1) the carriage of goods or passengers by sea between ports⁵ in the United Kingdom⁶ or between a port in the United Kingdom and an offshore installation⁷ in United Kingdom controlled waters⁸ or between offshore installations in United Kingdom controlled waters⁹;
- 224 (2) the carriage of passengers by sea on voyages or excursions beginning and ending at the same port in the United Kingdom, other than voyages or excursions which involve calling at any port or ports outside the British Islands, whether passengers disembark there or not¹⁰; or
- 225 (3) shipping services, other than the carriage of goods or passengers by sea, which are provided by means of ships out of ports in the United Kingdom, whether so provided within United Kingdom controlled waters or not, or provided within United Kingdom controlled waters by means of ships operating out of ports outside the United Kingdom¹¹.

Such an order may make provision:

- 226 (a) with respect to the circumstances in which shipping services are to be regarded for the purposes of the order as being provided from one or more permanent places of business maintained in the British Islands¹²;
- 227 (b) authorising the Secretary of State to issue licences sanctioning the provision of shipping services mentioned in heads (1) to (3) above, notwithstanding that they are not provided as mentioned in head (a) above, in cases where he is satisfied that there is no one willing and able to provide the services in question as mentioned in that head¹³;
- 228 (c) requiring the payment, in connection with applications for such licences, of fees determined with the approval of the Treasury¹⁴;
- 229 (d) exempting any prescribed¹⁵ class or description of shipping services from any prohibition so imposed¹⁶;
- 230 (e) authorising the Secretary of State, or a person appointed by him for the purposes, to serve notices requiring the production or furnishing of documents or information appearing to the Secretary of State or any such person to be necessary to enable him to determine such matters as may be prescribed¹⁷;
- 231 (f) with respect to the manner of service of notices in pursuance of head (e) above¹⁸.

The provisions of such an order must not discriminate between shipping services provided by different persons on the basis of the place of registration of the ships by means of which the services are provided¹⁹.

1 As to the Secretary of State see PARA 38.

2 The power to make an order under the Shipping and Trading Interests (Protection) Act 1995 s 5 is exercisable by statutory instrument, but no such order may be made unless a draft of it has been laid before and approved by resolution of each House of Parliament: s 5(7). Any such order may make different provision for different circumstances, and may make such transitional, incidental or supplementary provision as appears to the Secretary of State to be necessary or expedient: s 5(4). At the date at which this volume states the law, no such order had been made. As to the enforcement of such orders see PARA 1244.

The Merchant Shipping Act 1995 s 256(1) (appointment of inspectors) (see PARA 46) has effect in relation to any order under the Shipping and Trading Interests (Protection) Act 1995 s 5 or any licence issued by virtue of s 5(3) (b) (see head (b) in the text), as the Merchant Shipping Act 1995 s 256(1) has effect in relation to any such regulations or licence as is referred to in s 256(1)(b), (9); but s 259 (see PARA 49) has effect in relation to any inspector appointed by virtue of the Shipping and Trading Interests (Protection) Act 1995 s 5 with the omission of the Merchant Shipping Act 1995 s 259(2)(f)-(h): Shipping and Trading Interests (Protection) Act 1995 s 5(6).

3 For these purposes, 'shipping services' means the carriage of goods or passengers by sea, services provided by offshore support vessels, and such other services provided by means of ships as the Secretary of State may specify in an order under the Shipping and Trading Interests (Protection) Act 1995 s 5: s 5(8). As to the meaning of 'ship' for these purposes see PARA 74 note 6.

4 Shipping and Trading Interests (Protection) Act 1995 s 5(1). As to the meaning of 'British Islands' see **STATUTES** vol 44(1) (Reissue) PARA 1383.

5 As to the meaning of 'port' see PARA 74 note 17.

6 As to the meaning of 'United Kingdom' see PARA 17 note 3.

7 For these purposes, 'offshore installation' has the same meaning as in the Mineral Workings (Offshore Installations) Act 1971 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1684): Shipping and Trading Interests (Protection) Act 1995 s 5(8).

8 For these purposes, 'United Kingdom controlled waters' means waters within the seaward limits of the territorial sea of the United Kingdom and waters in any area designated under the Continental Shelf Act 1974 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636): Shipping and Trading Interests (Protection) Act 1995 s 5(8). As to the extent of the territorial and non-territorial sea, the baselines used for delimitation, and associated rights see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 121 et seq.

9 Shipping and Trading Interests (Protection) Act 1995 s 5(2)(a).

10 Shipping and Trading Interests (Protection) Act 1995 s 5(2)(b).

11 Shipping and Trading Interests (Protection) Act 1995 s 5(2)(c).

12 Shipping and Trading Interests (Protection) Act 1995 s 5(3)(a).

13 Shipping and Trading Interests (Protection) Act 1995 s 5(3)(b).

14 Shipping and Trading Interests (Protection) Act 1995 s 5(3)(c). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

15 For these purposes, 'prescribed' means prescribed by an order under the Shipping and Trading Interests (Protection) Act 1995 s 5: s 5(8). See note 2.

16 Shipping and Trading Interests (Protection) Act 1995 s 5(3)(d). The text refers to any prohibition imposed by virtue of s 5(1) (see the text and notes 1-4): see s 5(3)(d).

17 Shipping and Trading Interests (Protection) Act 1995 s 5(3)(e).

18 Shipping and Trading Interests (Protection) Act 1995 s 5(3)(f).

19 Shipping and Trading Interests (Protection) Act 1995 s 5(5).

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(iii) Liner Conferences

77. Code of conduct for liner conferences.

The desire of the developing countries to obtain a greater share of the market in liner traffic¹ gave rise to the Convention on a Code of Conduct for Liner Conferences², which was negotiated under the auspices of the United Nations Conference on Trade and Development. The Convention lays down rules relating to membership of conferences³, the participation in the trade⁴, internal procedures on conferences⁵, availability of conference agreements⁶, relations with shippers⁷, freight rates⁸, miscellaneous matters⁹ and the settlement of disputes¹⁰.

1 Liner traffic is traffic by merchant ships which provide a regular service on particular routes.

2 I.e. the Convention on a Code of Conduct for Liner Conferences (Geneva, 6 April 1974). 'Liner conference' or 'conference' means a group of two or more vessel-operating carriers providing international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or arrangement within the framework of which they operate under uniform or common freight rates and any other agreed conditions with respect to the provision of liner services: see Ch I (definitions). These other conditions often include conditions as to market sharing. As to the position of liner conferences under EC competition law see PARA 78.

3 See the Code of Conduct for Liner Conferences art 1.

4 See the Code of Conduct for Liner Conferences art 2.

5 See the Code of Conduct for Liner Conferences arts 3-5.

6 See the Code of Conduct for Liner Conferences art 6.

7 See the Code of Conduct for Liner Conferences Ch III (arts 7-11).

8 See the Code of Conduct for Liner Conferences Ch IV (arts 12-17).

9 See the Code of Conduct for Liner Conferences Ch V (arts 18-22).

10 See the Code of Conduct for Liner Conferences Ch VI (arts 23-46).

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78. Liner conferences and EC competition law.

Despite the manifest imperfections of the Code of Conduct for Liner Conferences¹, an EC Council Regulation gave effect to the Code within the European Community, albeit with reservations². This required a block exemption from the EC Treaty articles governing competition law³ to be granted in respect of liner shipping conferences⁴, but this is no longer supported⁵. As a consequence, the Code no longer has effect within the Community⁶, and the EC Treaty articles governing competition law⁷ now apply to scheduled maritime transport services operating in trade to or from the ports of the member states.

1 As to the Code see PARA 77.

2 See EC Council Regulation 954/79 (OJ L121, 17.5.79, p 1) concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences. The aim of this Regulation was to support the aspirations of the developing countries by bringing the Code of Conduct into effect but to neutralise the member states of the European Community and such other OECD countries as wished to participate in the package.

3 Ie a block exemption from the effect of the Treaty establishing the European Economic Community, Rome, 25 March 1957 (the 'EC Treaty') arts 81, 82 (as to which see **COMPETITION** vol 18 (2009) PARA 26 et seq). As to block exemptions generally see **COMPETITION** vol 18 (2009) PARA 67.

4 See EC Council Regulation 4056/86 (OJ L378, 31.12.1986, p 4). The exemption was based on the assumption that the fixing of prices and the regulation of capacity was required in order to provide reliable services and stable rates for freight.

5 See EC Council Regulation 1419/2006 (OJ L269, 28.9.2006, p 1), which repealed EC Council Regulation 4056/86 (OJ L378, 31.12.1986, p 4) (as to which see the text and notes 3-4).

6 See EC Regulation 1490/2007 of the European Parliament and of the Council of 11 December 2007 (OJ L332, 18.12.2007, p 1), which rendered inapplicable EC Council Regulation 954/79 of 15 May 1979 (OJ L121, 17.5.79, p 1) (as to which see the text and notes 1-2).

7 Ie EC Treaty arts 81, 82 (as to which see **COMPETITION** vol 18 (2009) PARA 26 et seq).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(i) In general/79. Outline of jurisdiction.

2. ADMIRALTY JURISDICTION OF THE HIGH COURT

(1) INTRODUCTION

(i) In general

79. Outline of jurisdiction.

The Admiralty Court is part of the Queen's Bench Division¹ and has jurisdiction in all causes and matters assigned by the Supreme Court Act 1981² to that division involving either the exercise of the Admiralty jurisdiction of the High Court³ or its jurisdiction as a prize court⁴. The Admiralty jurisdiction is invoked by other statutes, most notably the Hovercraft Act 1968⁵ and the Merchant Shipping Act 1995⁶.

Admiralty claims may be either in rem⁷ or in personam (now referred to as 'other claims')⁸. Limitation claims (being the statutory right afforded to shipowners and other persons to limit their liability in connection with a ship or other property) are also heard in the Admiralty Court⁹. Any such proceedings (whatever their exact nature) are subject to the jurisdictional rules now contained in EC legislation¹⁰.

A ship, as well as being liable to arrest as the subject of a claim in rem, may be seized in execution by the sheriff under a writ of fieri facias¹¹ because the ordinary remedies for enforcing a judgment in the High Court¹² are applicable to Admiralty claims.

1 The Administration of Justice Act 1970 abolished the Probate, Divorce and Admiralty Division of the High Court (see s 1(1) (repealed)), and provided for the constitution of the Admiralty Court of the Queen's Bench Division (see s 2(1) (repealed) (see now the Supreme Court Act 1981 s 6(1); and **COURTS** vol 10 (Reissue) PARA 603)). As to the distribution of business between divisions of the High Court see **COURTS** vol 10 (Reissue) PARA 610; and as to the Queen's Bench Division generally see **COURTS** vol 10 (Reissue) PARA 613. The judges of the Admiralty Court are puisne judges of the High Court nominated from time to time to be Admiralty judges: see s 6(2); and **COURTS** vol 10 (Reissue) PARA 603. However, jurisdiction over some questions of assessment of damages and investigation of accounts is exercised by the Admiralty Registrar: *Maid of Kent* (1881) 6 PD 178. As to the Admiralty Registrar see PARA 140. As to the development of the law that is administered in Admiralty see PARA 80 et seq.

There is no longer any jurisdiction in the county court in Admiralty matters: see the Civil Courts (Amendment) (No 2) Order 1999, SI 1999/1011 (which amended the Civil Courts Order 1983, SI 1983/713, so that, as from 26th April 1999, all Admiralty proceedings must be commenced in the High Court); and PARA 209. As to the jurisdiction of the High Court generally see **COURTS** vol 10 (Reissue) PARA 606 et seq; and as to county courts generally see **COURTS** vol 10 (Reissue) PARA 701 et seq.

2 As from a day to be appointed, the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales and the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 accordingly: see the Constitutional Reform Act 2005 s 59, Sch 11 para 1; and **COURTS** vol 10 (Reissue) PARA 601 et seq. However, at the date at which this volume states the law, no such day had been appointed.

3 The Admiralty jurisdiction of the High Court is provided for in the Supreme Court Act 1981 ss 20-24 (see PARA 85 et seq) and is defined by s 20(1) as being:

46 (1) jurisdiction to hear and determine any of the questions and claims mentioned in s 20(2) (see s 20(1)(a); and PARA 93 et seq);

47 (2) jurisdiction in relation to any of the proceedings mentioned in s 20(3) (see s 20(1)(b); and PARAS 91, 180, 194 et seq);

- 48 (3) any other Admiralty jurisdiction which it had immediately before 1 January 1982 (that is, before the commencement of the Supreme Court Act 1981) (see ss 20(1)(c), 153(2); and PARA 85); and
- 49 (4) any jurisdiction connected with ships or aircraft which is vested in the High Court apart from s 20 and is for the time being by rules of court made or coming into force after the commencement of the Supreme Court Act 1981 assigned to the Queen's Bench Division and directed by the rules to be exercised by the Admiralty Court (see s 20(1)(d); and PARA 85).

The Supreme Court Act 1981 ss 20-24 (see PARA 85 et seq) may be extended, with such exceptions, adaptations and modifications as may be specified, to any of the Channel Islands or the Isle of Man by Order in Council: see s 150(1); and PARA 216.

4 See the Supreme Court Act 1981 s 62(2); and PARA 85. As to the High Court's jurisdiction as a prize court see PARA 89; and **PRIZE**.

5 See the Hovercraft Act 1968; and PARA 87 et seq.

6 As to liability for oil pollution: see the Merchant Shipping Act 1995 s 166; and PARA 88. As to merchant shipping and liability for oil pollution generally see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 348 et seq.

7 As to the commencement of claims in rem see PARA 158 et seq.

8 As to the commencement of claims in personam ('other claims') see PARA 186 et seq.

9 As to limitation claims generally see PARA 194 et seq.

10 As to the rules relating to conflicts of jurisdiction see PARA 95 et seq. As to restrictions on jurisdiction generally see PARA 90.

11 As to writs of fieri facias see PARA 208; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1266 et seq. A person who maliciously, and without reasonable and probable cause, procures the arrest of a ship by Admiralty proceedings is liable to pay damages to the person aggrieved: see *The Strathnaver* (1875) 1 App Cas 58, PC; and **TORT** vol 45(2) (Reissue) PARAS 498-499.

12 As to enforcement generally see **CIVIL PROCEDURE** vol 12 (2009) PARA 1223 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

79 Outline of jurisdiction

NOTE 2--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(ii) Origins of Jurisdiction/80. Origin and conflict with common law courts.

(ii) Origins of Jurisdiction

80. Origin and conflict with common law courts.

The jurisdiction of the Admiralty Court in respect of offences committed upon the high seas is of ancient origin¹. As a result of possessing this criminal jurisdiction, the Court of the Lord High Admiral began to hear disputes also in all civil matters connected with the sea² and gradually usurped the jurisdiction of the common law courts in matters arising in inland tidal waters, in consequence of which two statutes were passed in the reign of Richard II confining the jurisdiction of the admirals and their deputies to things done upon the sea and in the main streams of great rivers to the seaward side of the bridges³.

The criminal jurisdiction of the Admiralty as adjusted by these statutes continued until 1537, when it was to a great extent transferred to commissioners of oyer and terminer under the Great Seal, of whom one was the judge of the High Court of Admiralty⁴. All proceedings on indictment for offences within the jurisdiction of the Admiralty of England are now to be brought before the Crown Court⁵.

The civil jurisdiction of the Admiralty Court continued within the limits laid down by the statutes of Richard II⁶, but its exercise involved the Admiralty Court in a long struggle with the superior courts of common law. The Admiralty Court asserted the highest and fullest jurisdiction over everything which might happen upon the high seas, but it was obliged to give way to the common law courts and ceased to exercise jurisdiction to the full extent which it had formerly claimed⁷. Nevertheless in the reign of William IV it still retained a curtailed jurisdiction which included a number of important subjects⁸.

1 Whether or not Admiralty jurisdiction in England took its origin from Saxon times (see 2 Co Litt 260b; Prynne's Animadversions on the 4th Institute 123), by the reign of Edward III the authority of the Crown to administer justice in respect of piracy or spoil and other offences committed upon the sea was undisputed (see *R v Keyn* (1876) 2 ExD 63 at 167 per Cockburn CJ; and see *The Zeta* [1892] P 285 at 300, CA, per Lord Esher MR).

2 See RG Marsden *the Selden Society's Select Pleas of the Court of Admiralty, AD 1390-1602* (1892-1897).

3 13 Ric 2 stat 1 (1389-90) c 5 (repealed by the Civil Procedure Acts Repeal Act 1879, but with a saving of its effect so far as jurisdiction is concerned); Admiralty Jurisdiction Act 1391 (repealed). For a modern consideration of the historical development of Admiralty jurisdiction see *The Goring* [1988] AC 831, [1988] 1 All ER 641, HL.

4 Offences at Sea Act 1536 (repealed). The jurisdiction of the Admiralty over criminal offences committed at sea was subsequently regulated by the Central Criminal Court Act 1834 s 22 (repealed by the Administration of Justice Act 1964 s 41(8), Sch 5, and replaced by Sch 1 para 5 (repealed)), and the Admiralty Offences Act 1844 (repealed). See also *R v Keyn* (1876) 2 ExD 63 at 66-67; *The Hercules* (1819) 2 Dods 353 at 371.

5 See the Supreme Court Act 1981 s 46. As to the extent of Admiralty jurisdiction in criminal matters see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1062-1063.

6 See note 3.

7 See *R v City of London Court Judge and Payne* [1892] 1 QB 273 at 292-294, CA, per Lord Esher MR.

8 The subjects included collisions between ships and injurious acts committed on the high seas (see *Mersey Docks and Harbour Board v Turner, The Zeta* [1893] AC 468, 7 Asp MLC 369, HL; *The Tubantia* [1924] P 78, 16

Asp MLC 346), salvage services not rendered within the body of a county (see *The Raft of Timber* (1844) 2 Wm Rob 251; *The Eleanor* (1805) 6 Ch Rob 39), possession of ships where no title was in question (see *The Warrior* (1818) 2 Dods 288), bottomry and respondentia (see *The Atlas* (1827) 2 Hag Adm 48) and claims for seamen's wages where there had been no special contract (see *Opy v Adison* (1693) 12 Mod Rep 38). As to the extent of Admiralty jurisdiction regarding salvage claims see PARA 113 et seq; and regarding bottomry and respondentia see PARA 134.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(ii) Origins of Jurisdiction/81. Advent of statutory jurisdiction.

81. Advent of statutory jurisdiction.

The Admiralty Court Act 1840 was passed to improve the practice and extend the jurisdiction of the High Court of Admiralty in England¹. This was the first of a series of Acts which enlarged or defined the jurisdiction, the latest of which is the Supreme Court Act 1981 as amended by the Merchant Shipping Act 1995. Part II of the Supreme Court Act 1981² derives substantially from Part I of the Administration of Justice Act 1956³, which redefined the Admiralty jurisdiction of the High Court so as, among other things, to give effect by domestic legislation to certain international conventions⁴. In addition to specifying in detail the questions or claims within the Admiralty jurisdiction⁵, the Supreme Court Act 1981 expressly preserves any other Admiralty jurisdiction vested in the High Court immediately before its commencement⁶.

1 The Admiralty Court Act 1840 was repealed by the Statute Law (Repeals) Act 1969 s 1, Schedule Pt VII.

2 ie the Supreme Court Act 1981 Pt II (ss 15-52).

3 ie the Administration of Justice Act 1956 Pt I (ss 1-8) (repealed).

4 As to which see PARA 85.

5 See the Supreme Court Act 1981 s 20(1)(a), (2); and PARA 93 et seq.

6 See the Supreme Court Act 1981 s 20(1)(c); and PARA 85.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(ii) Origins of Jurisdiction/82. Law administered in Admiralty.

82. Law administered in Admiralty.

Maritime law¹ is the law developed and administered in the Admiralty Court in exercising both its original jurisdiction² and the jurisdiction derived from statute³. Outside the special field of prize⁴, in times of hostilities there is no maritime law of the world, as distinct from the internal municipal laws of the individual countries, that is capable of giving rise to rights or liabilities enforceable in English courts; but, because of the subject matter and historic derivation from sources common to many maritime nations⁵, the internal municipal laws of different countries show greater similarity to one another than is found in law relating to what happens on land⁶.

Although maritime law was developed in a separate court in England, its development was nevertheless related to the law being developed in other courts, and the effect of the merger, in 1875, of the High Court of Admiralty with the High Court of Justice⁷ was to foster the development of common concepts between the common law courts and the Admiralty Court, which began at least as early as 1840 with the passing of the Admiralty Court Act 1840⁸. Since the mid 19th century, the development of English maritime law has continued to be greatly influenced by changes in concepts of the common law, and to regard it as constituting today a system of law entirely separate from the general law may lead to error⁹. In one sense, maritime law is part of the common law and it has been referred to as such¹⁰. The maritime law of England and Scotland is the same law and House of Lords decisions on appeals from Scotland are therefore authoritative in England¹¹.

1 In relation to navigation upon the high seas beyond the territorial limits of the United Kingdom, it has been said that the maritime law consisted of 'those rules of navigation which usually prevail among nations navigating the seas where the collision takes place': see *The Zollverein* (1856) Sw 96 at 99 per Dr Lushington. This statement was made in reference to the law as it was before the passing of the Merchant Shipping Act Amendment Act 1862 s 25 (repealed), which established collision regulations. Breach by the master of a ship of the collision regulations does not give rise to any statutory presumption of fault: see the Merchant Shipping Act 1995 s 92(3); and PARA 756. However, such breach will be evidence of negligence. For the enactments now in force with regard to the prevention of collisions see s 85; and PARAS 591, 715 et seq.

2 The original and common law jurisdiction of the court must be ascertained from the continuous practice and the judgments of its judges and from the judgments of the courts at Westminster; the former, in their court, using the law of the Rhodians, of Wisbey, the Hanse towns, of Oleron (incorporated in the 15th Century Black Book of Admiralty), the Digest and French and other ordinances, which, though they are not part of the law of England, contain many valuable principles and statements of marine practice: see *The Gas Float Whitton No 2* [1896] P 42 at 48, 8 Asp MLC 110 at 111, CA, per Lord Esher MR, quoting Abbott's *Law of Merchant Ships and Seamen* (5th Edn) Preface to the 1st Edn xi.

3 See PARAS 81, 85.

4 As to prize law see **PRIZE**.

5 See note 2.

6 See *The Tojo Maru* [1972] AC 242 at 290-291, [1971] 1 All ER 1110 at 1133, HL, per Lord Diplock.

7 See the Supreme Court of Judicature Act 1873 s 3 (repealed), which came into force on 1 November 1875: Supreme Court of Judicature (Commencement) Act 1874 (repealed).

8 The Admiralty Court Act 1840 was repealed by the Statute Law (Repeals) Act 1969 s 1, Schedule Pt VII: see PARA 81.

9 See *The Tojo Maru* [1972] AC 242 at 291, [1971] 1 All ER 1110 at 1133, HL, per Lord Diplock.

10 See eg *Chartered Mercantile Bank of India, London and China v Netherlands India Steam Navigation Co Ltd* (1883) 10 QBD 521 at 537, 5 Asp MLC 65 at 68, CA, per Lord Esher MR.

11 *Currie v M'Knight* [1897] AC 97, 8 Asp MLC 193, HL.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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83. Origin of claims in rem.

Originally, a suit in Admiralty was commenced by the arrest either of the person of the defendant or of his goods, whether or not the ship or goods in question constituted the subject matter of the offence, the purpose being to make the defendant put up bail or provide a fund for securing compliance with the judgment, if any, when it was obtained against him¹. The result of the conflict between the Court of Admiralty and the common law courts² was that this method of procedure became obsolete³, but the Admiralty Court succeeded in establishing a right to arrest property which was the subject matter of a dispute, and to enforce its judgments against the property so arrested, on the theory that a maritime lien⁴ to the extent of the claim attached to the property from the moment of the creation of such claim. Such a claim became known as an action in rem. The right to enforce a maritime lien by an action in rem was confined to the property by which the damage was caused or in relation to which the claim arose, and was enforceable against the property in the hands of an innocent purchaser⁵.

The present law preserves the jurisdiction based upon the maritime lien⁶ and extends the right to proceed in rem to many claims which do not give rise to a maritime lien⁷. In addition, in many cases jurisdiction may now be established by the commencement of proceedings against any other ship in the same beneficial ownership as the ship in connection with which the claim arose⁸.

1 *The Banco* [1971] P 137 at 150, [1971] 1 All ER 524 at 531, [1971] Lloyd's Rep 49 at 51, CA, per Lord Denning MR, citing Clerk's *Praxis Curiae Admiralitatis* (Simpson Edn, 1743), quoted in *The Dictator* [1892] P 304 at 311, and *the Selden Society's Select Pleas in the Court of Admiralty* vol 1 p lxiii. See also *The Monica S* [1968] P 741 at 749-750, [1967] 3 All ER 740 at 745-746 per Brandon J, where the historical background in respect of statutory rights of action in rem is summarised.

2 As to which see PARA 80.

3 The last instance of personal arrest is said to have been in 1780: see *The Clara* (1855) Sw 1 at 3. See also *The Dictator* [1892] P 304 at 313, 7 Asp MLC 251 at 254.

4 As to maritime liens generally see PARA 1014 et seq.

5 *The Ripon City* [1897] P 226 at 241-242, 8 Asp MLC 304 at 311. See also *The Bold Buccleugh* (1852) 7 Moo PCC 267, approved in *Currie v M'Knight* [1897] AC 97 at 106, 8 Asp MLC 193 at 195, HL.

6 See the Supreme Court Act 1981 s 21(3); and PARA 93.

7 See the Supreme Court Act 1981 s 21(2), (4); and PARA 93.

8 See the Supreme Court Act 1981 s 21(4)(b); and PARA 93.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any

enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(ii) Origins of Jurisdiction/84. Origin of claims in personam ('other claims').

84. Origin of claims in personam ('other claims').

The inherent jurisdiction possessed by the Court of Admiralty was exercised not only by proceedings in rem brought to enforce the maritime liens¹ attaching to the res (that is, the subject property of the claim) in each case, but, where the ship was lost or for some other reason could not be arrested, a claimant having a claim cognisable by the court, other than a claim on a bottomry or respondentia bond² or to the possession of the ship, might take proceedings in personam against the owners of the property which would have been arrested if the proceedings had been in rem³. Subsequently, in 1854, the High Court of Admiralty was empowered by statute to institute proceedings by personal service of a monition upon the owners of the property the subject matter of the dispute, without the necessity of issuing a warrant to arrest the property⁴.

A claim in personam may be brought in the High Court in all cases within the Admiralty jurisdiction of that court⁵, although the exercise of jurisdiction may be inhibited by the operation of rules of court relating to service of proceedings out of the jurisdiction⁶, and in collision and other similar cases the jurisdiction of the court cannot in any event be exercised unless certain special conditions are fulfilled⁷.

1 See PARA 83. As to maritime liens generally see PARA 1014 et seq.

2 As to the meanings of 'bottomry' and 'respondentia' see PARA 134.

3 *The Volant* (1842) 1 Wm Rob 383. See also *R v City of London Court Judge and Payne* [1892] 1 QB 273 at 307-310, CA, and the cases there cited. It was assumed where the proceedings were by monition (as to which see note 4) that an action in rem was depending so that all rights were tacitly reserved: see *The Trelawney* (1801) 3 Ch Rob 216n; *The Five Steel Barges* (1890) 15 PD 142 at 146; *The Port Victor (cargo ex)* [1901] P 243 at 254, 256, CA.

4 See the Admiralty Court Act 1854 s 13 (repealed). The monition in personam was a form of summons to appear in the action. As to the present practice see PARA 94.

5 See the Supreme Court Act 1981 s 21(1); and PARA 94.

6 As to which see PARA 188.

7 See the Supreme Court Act 1981 s 22; and PARA 94.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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(iii) Present Jurisdiction

85. Jurisdiction under the Supreme Court Act 1981.

The Admiralty Court takes Admiralty business, that is to say causes and matters assigned to the Queen's Bench Division¹ and involving the exercise of either the High Court's Admiralty jurisdiction² or its jurisdiction as a prize court³.

The Admiralty jurisdiction of the High Court of Justice is derived partly from statute and partly from the inherent jurisdiction of the High Court of Admiralty⁴. The Supreme Court Act 1981 lists the specific areas of jurisdiction of the High Court in this regard⁵ and includes any such jurisdiction which either it had immediately before 1 January 1982 (that is, before the commencement of the Supreme Court Act 1981)⁶, or is connected with ships⁷ (or aircraft⁸) and is vested in the High Court and is for the time being assigned by rules of court to the Queen's Bench Division and directed by the rules to be exercised by the Admiralty Court⁹. Although the jurisdiction of the High Court is concerned mainly with questions and claims arising in relation to ships¹⁰, it extends to hovercraft¹¹ and, in respect of certain questions and claims, also to aircraft¹².

However, nothing in the provisions of the Supreme Court Act 1981 that set out the Admiralty jurisdiction¹³:

- 232 (1) is to be construed as limiting the jurisdiction of the High Court to refuse to entertain an action for wages by the master¹⁴ or a member of the crew of a ship, not being a British ship¹⁵;
- 233 (2) affects the power of a receiver of wreck to detain a ship in respect of a salvage claim¹⁶; or
- 234 (3) authorises proceedings in rem¹⁷ in respect of any claim against the Crown, or the arrest, detention or sale of any of Her Majesty's ships¹⁸ or Her Majesty's aircraft¹⁹, or²⁰ Her Majesty's hovercraft²¹, or of any cargo or other property belonging to the Crown²².

1 As to the distribution of business between divisions of the High Court see **COURTS** vol 10 (Reissue) PARA 610. As to the Queen's Bench Division generally see **COURTS** vol 10 (Reissue) PARA 613.

2 As to the Admiralty jurisdiction of the High Court of Justice see the Supreme Court Act 1981 ss 20-24; and the text and notes 4-22. As to the mode of exercise of this jurisdiction see s 21; and PARAS 93-94. As to foreign aspects of the Admiralty jurisdiction see PARA 86. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

3 Supreme Court Act 1981 s 62(2). As to the High Court's jurisdiction as a prize court see PARA 89.

4 As to the development of the law that is administered in Admiralty see PARA 80 et seq.

5 The Admiralty jurisdiction of the High Court is defined by the Supreme Court Act 1981 s 20(1) as being: (1) jurisdiction to hear and determine any of the questions and claims mentioned in s 20(2) (see s 20(1)(a); and PARA 93 et seq); and (2) jurisdiction in relation to any of the proceedings mentioned in s 20(3) (see s 20(1)(b); and PARAS 91, 180, 194 et seq), and includes the areas set out in the text and notes 6-9.

The jurisdiction established by s 20 creates no new rights of action or maritime liens but extends to all ships whether British or not and whether registered or not and wherever the residence or domicile of their owners

may be, and to all claims, wherever arising: see s 20(7)(a), (b); and PARA 86. The areas of jurisdiction so defined must be considered in conjunction with the mode of exercise of that jurisdiction (see s 21; and PARAS 93-94) and the restrictions placed on that jurisdiction (see s 22 (cited in PARA 94); and s 23 (cited in PARA 86)).

6 Supreme Court Act 1981 ss 20(1)(c), 153(2).

The Supreme Court Act 1981 s 152(4), Sch 7 repealed the Administration of Justice Act 1956 s 1(1), which conferred upon the High Court any other jurisdiction which either was vested in the High Court of Admiralty before 1 November 1875 or was conferred on the High Court as being a court with Admiralty jurisdiction by or under any Act which came into operation on or after that date, and also any other jurisdiction connected with ships or aircraft vested in the High Court which was for the time being assigned by the rules of court to the Queen's Bench Division and directed by the rules to be exercised by the Admiralty Court. In *The Queen of the South* [1968] P 449 at 455, [1968] 1 All ER 1163 at 1168, Brandon J expressed the view (obiter) that the effect of the Administration of Justice Act 1956 s 1(1) was to preserve, independently of, and concurrently with, any jurisdiction conferred by s 1(1)(a)-(s) (repealed), the jurisdiction which was formerly conferred by the Admiralty Court Act 1840, the Admiralty Court Act 1861, the Supreme Court of Judicature Act 1873, the Supreme Court of Judicature Act 1875, and the Supreme Court of Judicature (Consolidation) Act 1925 (all repealed). It seems doubtful, however, whether jurisdiction 'is conferred' within the meaning of the Administration of Justice Act 1956 s 1(1) (repealed), by for example the Supreme Court of Judicature (Consolidation) Act 1925 s 22 (which was repealed by the Administration of Justice Act 1956 ss 7(2), 57(2), Sch 2). See also the Interpretation Act 1978 ss 16(1), 17(2)(a), Sch 2 para 3; and **STATUTES** vol 44(1) (Reissue) PARA 1381 et seq. The same would apply to the Supreme Court of Judicature Act 1873, which was wholly repealed in 1956. Cf the wording of the Administration of Justice Act 1956 s 1(1) (repealed) in relation to jurisdiction vested in the High Court of Admiralty immediately before the commencement of the Supreme Court of Judicature Act 1873. See also PARA 91.

7 For the purposes of the Supreme Court Act 1981 ss 20-23, unless the context otherwise requires, 'ship' includes any description of vessel used in navigation and, except in the definition of 'port' in s 22(2) (see PARA 94), and in s 24(2)(c) (see head (3) in the text), includes, subject to the Hovercraft Act 1968 s 2(3) (see PARA 383), a hovercraft: Supreme Court Act 1981 s 24(1).

8 As to the application of wreck and salvage law to aircraft see **AIR LAW** vol 2 (2008) PARA 599; and as to the jurisdiction in civil matters that arises in relation to aircraft or air navigation see **AIR LAW** vol 2 (2008) PARA 615.

9 Supreme Court Act 1981 s 20(1)(d). As to the procedure that applies to Admiralty claims and to the distribution of business to the Admiralty Court (including rules of court, practice directions and other guidance) see PARA 157 et seq.

10 See the Supreme Court Act 1981 s 20(7); and PARA 86. See also PARAS 87, 110. The Admiralty jurisdiction of the High Court also includes jurisdiction to hear and determine expenses and compensation claims arising from a safety direction made by the Secretary of State: see PARA 688.

11 As to the Admiralty jurisdiction in respect of hovercraft see PARA 87.

12 See the Supreme Court Act 1981 s 20(1)(a), (2)(j) (claims in the nature of salvage in respect of aircraft) (see PARAS 113, 114) and s 20(1)(a), (2)(k), (l) (claims in the nature of towage and pilotage in respect of aircraft) (see PARA 125). For the purposes of ss 20-23, 'towage' and 'pilotage', in relation to an aircraft, mean towage and pilotage while the aircraft is waterborne: see s 24(1); and PARA 93 note 40.

13 Ie nothing in the Supreme Court Act 1981 ss 20-23 (see PARA 85 et seq): see s 24(2).

14 For the purposes of the Supreme Court Act 1981 ss 20-23, unless the context otherwise requires, 'master' has the same meaning as in the Merchant Shipping Act 1995 s 313(1) (see PARA 424) and accordingly includes every person (except a pilot) having command or charge of a ship: Supreme Court Act 1981 s 24(1) (definition amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 59(3)).

15 Supreme Court Act 1981 s 24(2)(a). As to British ships under the Merchant Shipping Act 1995 see PARA 229 et seq.

16 Supreme Court Act 1981 s 24(2)(b) (amended by the Merchant Shipping Act 1995 Sch 13 para 59(3)). The text refers to the power of a receiver of wreck contained in the provisions of the Merchant Shipping Act 1995 s 226 (as to which see PARA 885): see the Supreme Court Act 1981 s 24(2)(b).

17 As to proceedings in rem see PARAS 83 et seq, 92 et seq.

18 For these purposes, 'Her Majesty's ships' has the meaning given by the Crown Proceedings Act 1947 s 38(2) (see **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 103): Supreme Court Act 1981 s 24(3).

19 For these purposes, 'Her Majesty's aircraft' has the meaning given by the Crown Proceedings Act 1947 s 38(2) (see **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 103): Supreme Court Act 1981 s 24(3).

20 Is subject to the Hovercraft Act 1968 s 2(3) (see PARA 383): see the Supreme Court Act 1981 s 24(2)(c).

21 For these purposes, 'Her Majesty's hovercraft' means hovercraft belonging to the Crown in right of Her Majesty's Government in the United Kingdom or Her Majesty's Government in Northern Ireland: Supreme Court Act 1981 s 24(3). As to the meaning of 'United Kingdom' see PARA 17 note 3.

22 Supreme Court Act 1981 s 24(2)(c).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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86. Foreign aspects of Admiralty jurisdiction.

The jurisdiction of the Admiralty Court has long extended both to foreign ships on the high seas¹, except ships in the ownership or possession of a foreign sovereign state and used for public purposes², and over injurious acts done on the high seas³. The Admiralty jurisdiction of the High Court applies⁴: (1) in relation to all ships⁵ or aircraft⁶, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be⁷; (2) in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land)⁸; and (3) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law⁹. The extent of the jurisdiction is subject to statutory rules governing the mode of exercise of jurisdiction¹⁰ and to restrictions in collision and other similar cases where the claim is in personam¹¹.

The general jurisdictional provisions contained in Part II of the Supreme Court Act 1981¹² are based, in part at least, on the International Convention relating to the Arrest of Sea-going Ships¹³ and the International Convention on certain Rules concerning Civil Jurisdiction in matters of Collision¹⁴, to both of which the United Kingdom is a signatory¹⁵. Where the meaning of the Act is not clear, the court may look to the terms of these Conventions to assist in the construction of the Act¹⁶.

1 See eg *The Mali Ivo* (1869) LR 2 A & E 356 (collision); *Chartered Mercantile Bank of India, London and China v Netherlands India Steam Navigation Co Ltd* (1883) 10 QBD 521 at 537, 5 Asp MLC 65 at 68, CA, per Brett LJ, and at 545 and 71 per Lindley LJ; *The Zeta* [1893] AC 468 at 482-486, 7 Asp MLC 369 at 373-374, HL, per Lord Herschell LC.

2 *The Parlement Belge* (1880) 5 PD 197, 4 Asp MLC 234, CA (action in rem); *The Annette, The Dora* [1919] P 105; *Compania Naviera Vascongado v SS Cristina* [1938] AC 485, [1938] 1 All ER 719, 60 Ll L Rep 147, HL; *Spain v The Arantzazu Mendi* [1939] AC 256, [1939] 1 All ER 719, HL. Such vessels cannot be proceeded against or arrested: *The Parlement Belge*; *The Jassy* [1906] P 270, 10 Asp MLC 278. It is not clear what the limits of 'public purposes' are. It has been held that immunity is not lost even if the vessel is employed by a foreign government in ordinary trading for profit: *The Parlement Belge*; *The Porto Alexandre* [1920] P 30, 15 Asp MLC 1, 1 Ll L Rep 191, CA. The trend of more recent cases, however, is to restrict the scope of immunity for state-owned vessels: see *The Philippine Admiral* [1977] AC 373, [1976] 1 All ER 78, PC (immunity lost for state-owned ship used for trading purposes). See also *Thai-Europe Tapioca Service Ltd v Government of Pakistan* [1975] 3 All ER 961, [1975] 1 WLR 1485, CA. State immunity is now governed by the State Immunity Act 1978: see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 242 et seq.

3 *The Tubantia* [1924] P 78 at 86, 16 Asp MLC 346 at 350 (trespass to the possession of a salvor). A distinction must be drawn between civil and criminal jurisdiction. As to Admiralty jurisdiction in relation to crime see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1062-1063; and as to the conflict of laws in relation to torts see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 366 et seq.

4 It is provided that nothing in the Supreme Court Act 1981 s 20(7) (see heads (1) to (3) in the text) is construed as extending the cases in which money or property is recoverable under any of the provisions of the Merchant Shipping Act 1995: Supreme Court Act 1981 s 20(7) proviso (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 59(2)). As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94.

5 As to the meaning of 'ship' for these purposes see PARA 85 note 7. The Admiralty jurisdiction of the High Court also extends to hovercraft: see PARA 87.

6 The wording of the Supreme Court Act 1981 s 20(7) extends its jurisdiction to all aircraft but only in respect of those claims or questions with regard to which the word 'aircraft' is used in the legislation: see *Re Glider Standard Austria SH 1964* [1965] P 463, [1965] 2 All ER 1022, [1965] 2 Lloyd's Rep 189. It has been held that a flying boat is not a 'ship or vessel' within the meaning of the collision liability clause in a policy of marine insurance: see *Polpen Shipping Co Ltd v Commercial Union Assurance Co Ltd* [1943] KB 161, [1943] 1 All ER 162. See also *Watson v RCA Victor Co Inc* (1934) 50 Ll L Rep 77, where it was held that a seaplane is not a 'ship or vessel' within the meaning of the Merchant Shipping Acts. For the purposes of the Merchant Shipping Act 1995 Pt IX (ss 224-255) (salvage and wreck), 'vessel' includes any ship or boat, or any other description of vessel used in navigation: see s 255(1); and PARA 885 note 5. As to the application of wreck and salvage law to aircraft see **AIR LAW** vol 2 (2008) PARA 599; and as to the jurisdiction in civil matters that arises in relation to aircraft or air navigation see **AIR LAW** vol 2 (2008) PARA 615.

7 Supreme Court Act 1981 s 20(7)(a). As to the rules of domicile and residence generally see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 35 et seq. See note 4.

8 Supreme Court Act 1981 s 20(7)(b). See note 4. However, the High Court does not have jurisdiction to determine any claim or question certified by the Secretary of State to be a claim or question which, under the Rhine Navigation Convention 1868, falls to be determined in accordance with the provisions of that Convention; and any proceedings to enforce such a claim which are commenced in the High Court must be set aside: Supreme Court Act 1981 s 23. 'Rhine Navigation Convention' means the Convention of the 7 October 1868 as revised by any subsequent Convention (see the Supreme Court Act 1981 s 24(1)), which established Rhine Courts to deal with certain matters of civil and criminal jurisdiction in relation to navigation on the Rhine (see art 33 et seq). A number of shipping and insurance companies have undertaken that they will not seek the Secretary of State's certificate in cases of claims by United Kingdom citizens for death or personal injury, if the ship concerned was British or was insured with one of the companies giving the undertaking: see the written answer of the Minister of Transport in the House of Commons, 599 HC Official Report (5th Series), 5 February 1959, written answers col 125. See also *The Atlantic Star* [1973] QB 364, [1972] 3 All ER 705, [1972] 2 Lloyd's Rep 446, CA (refusal to stay proceedings where incident occurred in foreign territorial waters and defendant ship was served with process in England). As to the Secretary of State see PARA 38. As to the meanings of 'Great Britain' and 'United Kingdom' see PARA 17 note 3.

The Supreme Court Act 1981 Pt II (ss 15-52) follows the terms of the international conventions mentioned in notes 10, 13, which do not apply in cases covered by the Rhine Navigation Convention. As to this and other limitations on the jurisdiction of the Admiralty Court see PARA 90.

9 Supreme Court Act 1981 s 20(7)(c). See note 4. As to claims relating to mortgages and charges see PARA 109.

10 See the Supreme Court Act 1981 s 21; and PARA 93 et seq. See also the International Convention relating to the Arrest of Seagoing Ships 1952 (Brussels, 10 May 1952; Cmd 8954); the International Convention on certain Rules concerning Civil Jurisdiction in Matters of Collision 1952 (Brussels, 10 May 1952; Cmd 8954); and PARAS 85, 95 et seq.

11 See the Supreme Court Act 1981 s 22; and PARA 94.

12 Ie contained in the Supreme Court Act 1981 Pt II.

13 Ie the International Convention relating to the Arrest of Sea-going Ships 1952 (Brussels, 10 May 1952; Cmd 8954) (as to which see PARA 8). As to jurisdictional issues in particular see art 7, especially art 7(2) (security in case of stay), which is implemented in England and Wales by the Civil Jurisdiction and Judgments Act 1982 s 26. Accordingly, where in England and Wales a court stays or dismisses Admiralty proceedings on the ground that the dispute in question should be submitted to the determination of the courts of another part of the United Kingdom or of an overseas country, the court may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest, order as follows (Civil Jurisdiction and Judgments Act 1982 s 26(1) (amended by the Arbitration Act 1996 s 107(2), Sch 4)):

- 50 (1) that the property arrested be retained as security for the satisfaction of any award or judgment which is given in respect of the dispute in the legal proceedings in favour of which those proceedings are stayed or dismissed, and which is enforceable in England and Wales (Civil Jurisdiction and Judgments Act 1982 s 26(1)(a) (amended by the Arbitration Act 1996 Sch 4)); or
- 51 (2) that the stay or dismissal of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such award or judgment (Civil Jurisdiction and Judgments Act 1982 s 26(1)(b)).

Where a court makes such an order, it may attach such conditions to the order as it thinks fit, in particular conditions with respect to the institution or prosecution of the relevant legal proceedings (s 26(2) (amended by the Arbitration Act 1996 Sch 4)); and, subject to any provision made by rules of court and to any necessary modifications, the same law and practice applies in relation to property retained in pursuance of such an order

as would apply if it were held for the purposes of proceedings in that court (Civil Jurisdiction and Judgments Act 1982 s 26(3)). As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

14 See the International Convention on certain Rules concerning Civil Jurisdiction in matters of Collision 1952 (Brussels, 10 May 1952; Cmd 8954) (as to which see PARA 8).

15 See *The Andrea Ursula* [1973] QB 265 at 270, [1971] 1 All ER 821 at 825, [1971] 1 Lloyd's Rep 145 at 148 per Brandon J.

16 *The Annie Hay* [1968] P 341, [1968] 1 All ER 657; *The Banco* [1971] P 137, [1971] 1 All ER 524, [1971] 1 Lloyd's Rep 49, CA; and *The Andrea Ursula* [1973] QB 265, [1971] 1 All ER 821, [1971] 1 Lloyd's Rep 145; all following *Salomon v Customs and Excise Comrs* [1967] 2 QB 116, [1966] 3 All ER 871, CA; and *Post Office v Estuary Radio Ltd* [1968] 2 QB 740, [1967] 3 All ER 663, CA.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(iii) Present Jurisdiction/87. Jurisdiction under the Hovercraft Act 1968.

87. Jurisdiction under the Hovercraft Act 1968.

Part II of the Supreme Court Act 1981¹ has effect as if references to ships, subject to certain exceptions, included references to hovercraft²; but the application of that legislation to hovercraft may be excluded or modified by Order in Council³.

¹ ie the Supreme Court Act 1981 Pt II (ss 15-52) (see PARAS 79 et seq, 88 et seq).

² See the Hovercraft Act 1968 s 2(1); and PARA 383. As to the regulation of hovercraft generally see PARA 381 et seq. As to the application of carriage by air legislation and road traffic legislation to hovercraft see **CARRIAGE AND CARRIERS**; and **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 218.

Except as otherwise provided by or under the Hovercraft Act 1968 or an enactment passed before 26 July 1968, as from 29 June 1972 a hovercraft must not be treated as a ship, aircraft or motor vehicle for the purposes of any such enactment or any instrument having effect by virtue of any such enactment: see s 4(3); and PARA 381.

³ See the Hovercraft Act 1968 s 2(3); and PARA 383.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(iii) Present Jurisdiction/88. Jurisdiction under the Merchant Shipping Act 1995 in respect of liability for damage from oil pollution.

88. Jurisdiction under the Merchant Shipping Act 1995 in respect of liability for damage from oil pollution.

Admiralty jurisdiction in respect of claims for damage done by a ship¹ extends to claims under the Merchant Shipping Act 1995 in respect of: (1) liability incurred for oil pollution damage²; or (2) a liability falling on the International Oil Pollution Compensation Funds³.

1 As to which generally see the Supreme Court Act 1981 s 20(1)(a), (2)(e); and PARA 110 et seq.

2 See the Supreme Court Act 1981 s 20(5)(a); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 441 et seq. Head (1) in the text refers to liability that may be incurred under the Merchant Shipping Act 1995 Pt VI Ch III (ss 152-171) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 441 et seq). As to the jurisdiction of United Kingdom courts and the registration of foreign judgments under Pt VI Ch III see s 166; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 456.

3 See the Supreme Court Act 1981 s 20(5)(b); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 459 et seq. Head (2) in the text refers to liability that may be incurred under the Merchant Shipping Act 1995 Pt VI Ch IV (ss 172-182C) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 459 et seq). See also *Practice Direction--Admiralty Claims* PD 61 para 11; PARA 155; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 459 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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89. Jurisdiction as a prize court.

The High Court is a prize court¹ and has all such jurisdiction² as is conferred on it by the Prize Acts 1864 to 1944³ and all such other jurisdiction on the high seas and elsewhere as it had as a prize court immediately before 1 January 1982 (that is, before the commencement of the Supreme Court Act 1981)⁴.

Appeals from all Admiralty courts in prize cases (including the High Court when acting as a prize court) lie to the Judicial Committee of the Privy Council⁵.

¹ See generally **PRIZE**.

² In accordance with the Supreme Court Act 1981 s 19(2) (general jurisdiction of the High Court) (see **COURTS** vol 10 (Reissue) PARA 607); see s 27.

³ See the Supreme Court Act 1981 s 27(a); and **PRIZE** vol 36(2) (Reissue) PARA 847. In the Prize Acts 1864 to 1944, references to the High Court of Admiralty are by virtue of the Supreme Court Act 1981 s 151(5), Sch 4 para 1 to be construed as references to the High Court: see s 27(a). As to the Prize Acts 1864 to 1944 see **PRIZE** vol 36(2) (Reissue) PARA 803.

⁴ See the Supreme Court Act 1981 ss 27(b), 153(2); and **PRIZE** vol 36(2) (Reissue) PARA 847.

⁵ See the Naval Prize Act 1864 s 5; and **PRIZE** vol 36(2) (Reissue) PARAS 886-887. As to the Judicial Committee of the Privy Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 311; and **COURTS** vol 10 (Reissue) PARA 401 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(iii) Present Jurisdiction/90. Restrictions on jurisdiction.

90. Restrictions on jurisdiction.

The jurisdiction of the English courts may be excluded or limited in Admiralty matters, or generally, as a result of (for example):

- 235 (1) conflicts of jurisdiction, and disputes as to the forum in which claims should be heard¹;
- 236 (2) statutory rules governing the mode of exercise of the jurisdiction² and statutory restrictions on the entertainment of actions in collision and other similar cases where the claim is in personam³;
- 237 (3) restrictions on the entertainment of claims for wages by the master or a member of the crew of a foreign ship, in cases where the consul in London objects⁴;
- 238 (4) restrictions on the entertainment of claims against the Crown, or the arrest, detention or sale of any of Her Majesty's ships or aircraft, or of any cargo or other property belonging to the Crown⁵;
- 239 (5) the general immunity enjoyed by certain individuals and bodies from the jurisdiction of the English courts⁶;
- 240 (6) the general restriction, except by leave of the court and subject to such terms as it may impose, on claims or proceedings against companies or their property in cases where a winding-up order has been made or a provisional liquidator has been appointed in respect of that company⁷.

1 The matters mentioned in head (1) in the text are subject to relevant agreements and commitments which are binding on the United Kingdom: see PARA 95 et seq. See also PARA 85. As to the meaning of 'United Kingdom' see PARA 17 note 3.

As well as the mechanisms that exist for resolving such conflicts and disputes that arise as mentioned in head (1) in the text, restrictions are placed on the court's jurisdiction in relation to claims or questions which are certified by the Secretary of State to be a claim or question falling to be determined, under the terms of specific international conventions, by the court of a foreign country: see eg the Supreme Court Act 1981 s 23 in relation to the Rhine Navigation Convention (cited in PARA 86); and the Nuclear Installations Act 1965 s 17(1) (cited in **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1507) in relation to relevant international agreements with respect to third-party liability in the field of nuclear energy to which the United Kingdom or Her Majesty's Government therein are party, other than agreements relating to liability in respect of nuclear reactors comprised in means of transport (see s 26(1); and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1487). As to the Secretary of State see PARA 38.

2 See the Supreme Court Act 1981 s 21; and PARA 93 et seq. See also PARAS 85, 95 et seq.

3 See the Supreme Court Act 1981 s 22; and PARA 94. The power of a receiver of wreck to detain a ship in respect of a salvage claim is also unaffected by the Admiralty jurisdiction of the High Court: see the Supreme Court Act 1981 s 24(2)(b); and PARA 85.

4 See the Consular Relations Act 1968 s 4; and PARA 128. See also the Supreme Court Act 1981 s 24(2)(a); and PARA 85. As to the requirements as to notice to the consul of the foreign state when a foreign ship is arrested see PARA 161.

5 See the Crown Proceedings Act 1947 s 29(1); and PARA 179. See also the Supreme Court Act 1981 s 24(2)(c); and PARA 85.

6 Predominant among the persons mentioned in head (5) in the text are states, and others entitled to plead sovereign or diplomatic immunity, although the nature and extent of the immunity varies according to the identity of the claimant and the nature of the claim brought: see **INTERNATIONAL RELATIONS LAW** vol 61 (2010)

PARA 242 et seq. See also PARA 86. Cf *Bridge Oil Ltd v Owners and/or Demise Charterers of the Ship Giuseppe di Vittorio* (1997) Times, 10 November, [1997] All ER (D) 39, CA, a case in which the Republic of Ukraine as owner of the vessel and a successor state to the former Union of Soviet Socialist Republics was not entitled to claim sovereign immunity to defeat the creditor's claim.

Similar immunities to those mentioned in head (5) in the text may be conferred upon an international organisation by order made under the International Organisations Act 1968: see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 309 et seq.

7 See the Insolvency Act 1986 s 130; and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 893.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(iv) Procedural Matters/91. Assignment of business to Admiralty Court.

(iv) Procedural Matters

91. Assignment of business to Admiralty Court.

All jurisdiction vested in the High Court under the Supreme Court Act 1981 belongs to all the divisions alike¹, and all the judges of that court have equal power, authority and jurisdiction². However, the following claims must be started in the Admiralty Court³:

- 241 (1) a claim in rem⁴; a claim for damage done by a ship⁵; a claim concerning the ownership of a ship⁶; a claim under the Merchant Shipping Act 1995⁷; a claim for loss of life or personal injury as specified in the Supreme Court Act 1981⁸; a claim by a master or member of a crew for wages⁹; a claim in the nature of towage¹⁰; or a claim in the nature of pilotage¹¹;
- 242 (2) a collision claim¹²;
- 243 (3) a limitation claim¹³; or
- 244 (4) a salvage claim¹⁴.

Any other Admiralty claim may be started in the Admiralty Court¹⁵.

All proceedings by which any application is made to the High Court under the Merchant Shipping Act 1995 are also taken by the Admiralty Court¹⁶.

The procedural rule that allows the High Court to order proceedings in any Division of the High Court to be transferred to another Division, and allows a judge dealing with claims in a specialist list to order proceedings to be transferred to or from that list¹⁷, applies to claims in the Admiralty Court except that the Admiralty Court may order the transfer of a claim to the Commercial List¹⁸, to a Mercantile Court¹⁹, to the Mercantile list at the Central London County Court²⁰, or to any other appropriate court²¹.

1 See the Supreme Court Act 1981 s 5(5); and **COURTS** vol 10 (Reissue) PARA 603. This is without prejudice to the provisions of the Supreme Court Act 1981 relating to the distribution of business in the High Court: see s 5(5). As to the distribution of business between divisions of the High Court see **COURTS** vol 10 (Reissue) PARA 610.

2 See the Supreme Court Act 1981 s 4(3); and **COURTS** vol 10 (Reissue) PARA 602.

3 CPR 61.2(1) (CPR Pt 61 added by SI 2001/4015). For these purposes, 'Admiralty Court' means the Admiralty Court of the Queen's Bench Division of the High Court of Justice (CPR 61.1(2)(b) (as so added)); and 'Admiralty claim' means a claim within the Admiralty jurisdiction of the High Court as set out in the Supreme Court Act 1981 s 20 (see PARAS 85 et seq, 92 et seq) (CPR 61.1(2)(a) (as so added)). CPR Pt 61 applies to Admiralty claims (CPR 61.1(1) (as so added)); and see the Admiralty and Commercial Courts Guide para N1.1) but CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (CPR 61.1(3) (as so added)). Similarly, the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61: see para 1.1. As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 157 et seq. As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615.

The Admiralty and Commercial Courts Guide is published with the approval of the Lord Chief Justice and the Head of Civil Justice in consultation with the Judges of the Admiralty and Commercial Courts and with the advice and support of the Admiralty Court and Commercial Court Committees: see para A1.2. It is intended to provide guidance about the conduct of proceedings in the Admiralty and Commercial Courts and, within the framework of the Civil Procedure Rules and Practice Directions, to establish the practice to be followed in those courts: see para A1.2; and PARA 157 et seq. As to the Commercial Court Committee see para A3; and as to the Admiralty Court Committee see para N2.

4 CPR 61.2(1)(a)(i) (as added: see note 3). For these purposes, 'claim in rem' means a claim in an admiralty action in rem: CPR 61.1(2)(c) (as so added). As to claims in rem see PARAS 83 et seq, 92 et seq; and as to the procedure that applies to claims in rem see PARA 158 et seq.

5 CPR 61.2(1)(a)(ii) (as added: see note 3). For these purposes, 'ship' includes any vessel used in navigation: CPR 61.1(2)(k) (as so added). As to claims for damage done by a ship see PARA 110 et seq.

6 CPR 61.2(1)(a)(iii) (as added: see note 3). As to claims concerning the ownership of a ship see PARA 104 et seq.

7 CPR 61.2(1)(a)(iv) (as added: see note 3). Specifically, the Admiralty jurisdiction of the High Court to hear and determine any claim for damage done by a ship (as to which see the Supreme Court Act 1981 s 20(1)(a), (2)(e); and PARA 110 et seq) extends to claims in respect of liability for damage from oil pollution incurred under the Merchant Shipping Act 1995 Pt VI Ch III (ss 152-171) (see the Supreme Court Act 1981 s 20(5)(a); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 441 et seq) or under the Merchant Shipping Act 1995 Pt VI Ch IV (ss 172-182C) (see the Supreme Court Act 1981 s 20(5)(b); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 459 et seq): see PARA 88.

8 CPR 61.2(1)(a)(v) (as added: see note 3). The text refers to a claim that is specified in the Supreme Court Act 1981 s 20(1)(a), (2)(f) (as to which see PARA 112): see CPR 61.2(1)(a)(v) (as so added).

9 CPR 61.2(1)(a)(vi) (as added: see note 3). As to claims by a master or member of a crew for wages see PARA 127 et seq.

10 CPR 61.2(1)(a)(vii) (as added: see note 3). As to claims in the nature of towage see PARA 125 et seq.

11 CPR 61.2(1)(a)(viii) (as added: see note 3). As to claims in the nature of pilotage see PARA 125 et seq.

12 CPR 61.2(1)(b) (as added: see note 3). For these purposes, 'collision claim' means a claim within the Supreme Court Act 1981 s 20(1)(b), (3)(b) (see PARA 180): see CPR 61.1(2)(d) (as so added).

13 CPR 61.2(1)(c) (as added: see note 3). For these purposes, 'limitation claim' means a claim under the Merchant Shipping Act 1995 for the limitation of liability in connection with a ship or other property (see PARA 195 et seq): see CPR 61.1(2)(e) (as so added). See also the Supreme Court Act 1981 s 20(1)(b), (3)(c); and PARA 194.

14 CPR 61.2(1)(d) (as added: see note 3). For these purposes, 'salvage claim' means a claim:

- 52 (1) for or in the nature of salvage (see PARAS 113, 876 et seq) (CPR 61.1(2)(f)(i) (as so added));
- 53 (2) for special compensation under the Merchant Shipping Act 1995 s 224(1), (2), Sch 11 art 14 (ie regarding salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment) (see PARAS 113, 905) (CPR 61.1(2)(f)(ii) (as so added));
- 54 (3) for the apportionment of salvage (as to which see PARAS 113, 119, 887 et seq) (CPR 61.1(2)(f)(iii) (as so added)); and
- 55 (4) arising out of or connected with any contract for salvage services (as to which see PARA 113) (CPR 61.1(2)(f)(iv) (as so added)).

15 CPR 61.2(2) (as added: see note 3).

16 Supreme Court Act 1981 s 20(1)(b), (3)(a) (s 20(3)(a) amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 59(2)).

17 Ie CPR 30.5 (as to which see **CIVIL PROCEDURE** vol 11 (2009) PARA 67): see CPR 61.2(3) (as added: see note 3). As to specialist proceedings see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq. If a claim is to be in one of the specialist High Court lists, and the High Court is to issue the claim form, the form must state that the claim is to be in one of the specialist lists and also state which list: see CPR 16.3; and **CIVIL PROCEDURE** vol 11 (2009) PARA 586.

18 CPR 61.2(3)(a) (as added: see note 3). As to the Commercial List see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq.

19 CPR 61.2(3)(b) (as added: see note 3). As to the Mercantile Courts and business lists see **CIVIL PROCEDURE** vol 12 (2009) PARA 1545.

20 CPR 61.2(3)(c) (as added: see note 3). As to the Mercantile list at the Central London County Court see **CIVIL PROCEDURE** vol 12 (2009) PARA 1545.

21 CPR 61.2(3)(d) (as added: see note 3). See also *NV Bureau Wijsmuller v The Tojo Maru (Owners)* [1968] 2 Lloyd's Rep 436, CA (a salvage case, in which a judge's decision not to order a transfer was reversed on appeal).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

91 Assignment of business to Admiralty Court

NOTE 3--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009).

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92. Nature of claims in rem and claims in personam ('other claims').

A claim in rem is a claim against the ship itself¹, but the view that, if the owners of the vessel do not acknowledge service of the claim form in order to defend their property, then no personal liability can be established against them² has been questioned³. It has been stated that, if the defendant acknowledges service, a claim in rem becomes (or continues also as) a claim in personam⁴; but the Admiralty jurisdiction of the High Court may now in all cases be invoked by a claim in personam, although this is subject to certain restrictions in the case of collision and similar cases, except where the defendant submits or agrees to submit to the jurisdiction of the court⁵.

The foundation of a claim in rem is the lien resulting from the personal liability of the owner of the res (that is, the subject property of the claim)⁶. Therefore, a claim in rem cannot be brought to recover damages for injury caused to a ship by the malicious act of the master of the defendant's ship⁷, or for damage done at a time when the ship was in the control of third parties by reason of compulsory requisition⁸. On the other hand, in several cases, ships allowed by their owners to be in the possession and control of charterers have been successfully proceeded against to enforce liens which arose whilst the ships were in control of such third parties⁹.

The defendant in an Admiralty claim in personam is liable, as in other claims in the High Court, for the full amount of the claimant's proved claim¹⁰. Equally, in a claim in rem, a defendant who acknowledges service is now liable for the full amount of the judgment¹¹, even though it exceeds the value of the res or of the bail provided¹². The right to recovery of damages may, however, be affected by the right of the defendant to the benefit of statutory provisions relating to limitation of liability¹³.

1 As to the origin of claims in rem see PARA 83.

2 The traditional view is that, where there has been no acknowledgment of service (formerly entry of appearance) in a claim in rem, the claimant's only remedy is the sale of the arrested res, so that he can neither obtain execution for any unsatisfied balance of his claim, nor claim any remedy such as an order for specific performance against the defendant: see *The Burns* [1907] P 137 at 149, CA (a case decided under the Public Authorities Protection Act 1893 (repealed) limiting the time within which action may be taken against certain persons, and following *The Longford* (1889) 14 PD 34, CA). See also *The Banco* [1971] P 137 at 151, [1971] 1 All ER 524 at 531, [1971] 1 Lloyd's Rep 49 at 52, CA, per Lord Denning MR.

3 See *The Conoco Britannia* [1972] 2 All ER 238 at 245 per Brandon J, where it was said that the point did not, strictly speaking, arise for decision in any of the cases cited in note 2, and, to this extent, has not been decided.

4 *The Gemma* [1899] P 285 at 292, CA, per AL Smith LJ. Cf *The Broadmayne* [1916] P 64 at 77, CA, proposing the view that the claim proceeds only as if it were a claim in personam whilst still retaining the characteristics of a claim in rem. As to the origin of claims in personam (now known as 'other claims') see PARA 84; and as to claims in personam ('other claims') generally see PARA 92 et seq.

After acknowledgment of service in an Admiralty claim in rem, the claim does not lose its in rem character, but proceeds as a hybrid, being both in rem and in personam even though the res may have been released by the court: see *The Maciej Rataj* [1992] 2 Lloyd's Rep 552, CA. See also *The Indian Grace (No 2)* [1998] 1 Lloyd's Rep 1, HL. See further *The Banco* [1971] P 137 at 151, [1971] 1 All ER 524 at 531, [1971] 1 Lloyd's Rep 49 at 51, CA, per Lord Denning MR; and *The August 8* [1983] 2 AC 450, [1983] 1 Lloyd's Rep 351, PC. It has not yet been decided whether or not, in a claim in rem where the defendant has not acknowledged service, the claimant claiming equitable relief may enforce an order for specific performance or granting an injunction: see *The*

Conoco Britannia [1972] 2 All ER 238 at 244-245 per Brandon J. See also *The Nordglimt* [1988] 1 QB 183, [1988] 2 All ER 531, [1987] 2 Lloyd's Rep 470; *The Linda* [1988] 1 Lloyd's Rep 175; *The Deichland* [1990] 1 QB 361, [1989] 2 All ER 1066, CA.

5 See the Supreme Court Act 1981 ss 21, 22; and PARA 94.

6 *The Utopia* [1893] AC 492 at 499, PC; *The Castlegate* [1893] AC 38 at 52, HL, per Lord Watson; and see *The Parlement Belge* (1880) 5 PD 197, CA. As to the personal liability of the beneficial owner as a ground of statutory jurisdiction in rem see PARA 93. For a general discussion of maritime liens see PARA 1014 et seq.

7 *The Ida* (1860) Lush 6; *The Druid* (1842) 1 Wm Rob 391; see also *Currie v M'Knight* [1897] AC 97, 8 Asp MLC 193, HL.

8 *The Sylvan Arrow* [1923] P 220, 16 Asp MLC 244, where the authorities are reviewed by Hill J.

9 *The Ruby Queen* (1861) Lush 266; *The Lemington* (1874) 2 Asp MLC 475; *The Tasmania* (1888) 13 PD 110. The authorities differ as to whether the right to proceed in rem against the ship in the possession and control of charterers arises on the basis that the charterers are deemed to have authority from the owner to subject the ship to the lien (*The Ripon City* [1897] P 226 at 244), or whether the lien arises by reason of the charterers being 'owners' for this purpose (see the remarks of Brandon J in *The Andrea Ursula* [1973] QB 265 at 269-270, [1971] 1 All ER 821 at 824-825, [1971] 1 Lloyd's Rep 145 at 147-148, where the issue is regarded as irrelevant since the Administration of Justice Act 1956). Charterers having possession and control as above are usually described as charterers by demise or bareboat charterers. See also PARA 93.

10 This follows from the unification of jurisdiction and of law on the creation of the High Court by the Supreme Court of Judicature Act 1873 (repealed).

11 *The Dictator* [1892] P 304; *The Joannis Vatis (No 2)* [1922] P 213.

12 *The Dupleix* [1912] P 8, following the view expressed by Jeune J in *The Dictator* [1892] P 304, and approved by the Court of Appeal in *The Gemma* [1899] P 285, CA. In any event, since the Supreme Court of Judicature Consolidation Acts 1873 and 1875, the defendant who acknowledges service renders himself liable to all the remedies enforceable by the High Court of Justice: see *The Joannis Vatis (No 2)* [1922] P 213 at 222 per Duke P. As to the position where the defendant in a claim in rem does not acknowledge service see the text and notes 2-3.

13 As to the statutory right to limit liability and the procedure relating to such claims see PARA 194 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(iv) Procedural Matters/93. Claims in rem and the ship or property which is the subject.

93. Claims in rem and the ship or property which is the subject.

The Admiralty jurisdiction of the High Court¹ may be invoked, and an action in rem brought against the ship² or property in connection with which any of the following claims or questions arise³:

- 245 (1) any claim to the possession of a ship or ownership of a ship or to the ownership of a share in a ship⁴;
- 246 (2) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship⁵;
- 247 (3) any claim in respect of a mortgage or charge on a ship or any share in a ship⁶; and
- 248 (4) any claim for the forfeiture or condemnation of a ship, or of goods which are being or have been carried, or have attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty⁷.

Where a dispute under a charterparty has gone to arbitration, current case law is uncertain as to whether a claim in rem may be brought to enforce the award⁸. Jurisdiction exists even though the claimant's purpose in invoking it is simply to obtain security in arbitration proceedings, but exercise of the power of arrest is discretionary, not mandatory⁹.

The Admiralty jurisdiction of the High Court may be invoked also to hear and determine a number of other claims¹⁰, as follows:

- 249 (a) any claim for damage done by a ship¹¹;
- 250 (b) any claim for loss of life or personal injury sustained in consequence of any defects in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of certain persons¹², being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship¹³;
- 251 (c) any claim for loss of or damage to goods carried in a ship¹⁴;
- 252 (d) any claim arising out of any agreement relating to the carriage of goods in a ship or for the use or hire of a ship¹⁵;
- 253 (e) any of the following claims (whether in connection with a ship or an aircraft), namely: (i) any claim under the International Convention on Salvage 1989¹⁶; (ii) any claim under any contract for or in relation to salvage services¹⁷; or (iii) any claim in the nature of salvage not falling within head (i) or head (ii) above¹⁸;
- 254 (f) any claim in the nature of towage in respect of a ship or an aircraft¹⁹;
- 255 (g) any claim in the nature of pilotage in respect of a ship or aircraft²⁰;
- 256 (h) any claim in respect of goods or materials supplied to a ship for her operation or maintenance²¹;
- 257 (i) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues²²;
- 258 (j) any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages)²³;

- 259 (k) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship²⁴;
- 260 (l) any claim arising out of an act which is or is claimed to be a general average act²⁵; and
- 261 (m) any claim arising out of bottomry²⁶.

However, in the case of any claim falling within heads (a) to (m) above²⁷, where the claim arises in connection with a ship²⁸, and where the person who would be liable in a claim in personam (the 'relevant person')²⁹ was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship³⁰, the jurisdiction may be invoked by a claim in rem³¹ either: (A) against that ship (if at the time when the claim is brought the relevant person is either the beneficial owner³² of that ship as respects all the shares in it or the charterer of it under a charter by demise)³³; or (B) against any other ship of which, at the time when the claim is brought³⁴, the relevant person is the beneficial owner as respects all the shares in it³⁵. The purpose of this provision is to confer the right to arrest either the ship in respect of which the cause of action is alleged to have arisen or any other ship in the same ownership (that is, against what is generally referred to as a 'sister' ship which is owned by the person who would be liable in a claim in personam)³⁶. This right is conferred whether or not the claim in rem gives rise to a maritime lien on the ship mentioned in head (A) above³⁷. Where, as regards any such claim falling within heads (a) to (m) above³⁸, a ship has been served with a claim form or arrested in a claim in rem brought to enforce that claim, no other ship may be served with a claim form or arrested in that or any other claim in rem brought to enforce that claim, but this does not prevent the issue, in respect of any one such claim, of a claim form naming more than one ship or of two or more claim forms each naming a different ship³⁹.

In the case of a claim in the nature of towage or pilotage in respect of an aircraft⁴⁰, a claim in rem may be brought in the High Court against that aircraft if, at the time when the claim is brought, it is beneficially owned by the person who would be liable on the claim in a claim in personam⁴¹.

In any case where there is a maritime lien⁴² or other charge⁴³ on any ship, aircraft or other property for the amount claimed, a claim in rem may be brought in the High Court against that ship, aircraft or property⁴⁴. A maritime lien may be so invoked against the ship, aircraft or other property, even in the hands of an innocent purchaser⁴⁵.

Where, in the exercise of its Admiralty jurisdiction, the High Court orders any ship, aircraft or other property to be sold, the court has jurisdiction to hear and determine any question arising as to the title to the proceeds of sale⁴⁶.

Nothing in the Crown Proceedings Act 1947 authorises proceedings in rem in respect of any claim against the Crown, or the arrest, detention or sale of any of His Majesty's ships or aircraft, or of any cargo or other property belonging to the Crown, or gives to any person any lien on any such ship, aircraft, cargo or other property⁴⁷.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 As to the origin of claims in rem see PARA 83; and as to claims in rem generally see PARA 92. As to the meaning of 'ship' for these purposes see PARA 85 note 7.

3 See the Supreme Court Act 1981 s 21(2). As to claims where the right is conferred to arrest either the ship in respect of which the cause of action is alleged to have arisen or any other ship in the same ownership see heads (a) to (m) in the text. As to the procedure that governs Admiralty claims see PARA 157 et seq.

4 See the Supreme Court Act 1981 ss 20(1)(a), (2)(a), 21(2); and PARA 104.

5 See the Supreme Court Act 1981 ss 20(1)(a), (2)(b), 21(2); and PARA 106.

6 See the Supreme Court Act 1981 ss 20(1)(a), (2)(c), 21(2); and PARA 109.

7 See the Supreme Court Act 1981 ss 20(1)(a), (2)(s), 21(2); and PARA 135.

8 See *The Bumbesti* [2000] QB 559, [2000] 2 All ER 692, [1999] 2 Lloyd's Rep 481, not following *The St Anna* [1983] 2 All ER 691, [1983] 1 WLR 895.

9 See *The Andria* [1984] QB 477, [1984] 1 All ER 1126, CA.

10 See the Supreme Court Act 1981 s 20(1)(a); and PARA 104 et seq. The other claims referred to in the text are those mentioned in s 20(1)(a), (2)(e)-(r) (see heads (a) to (m) in the text): see s 20(1)(a); and PARA 110 et seq.

11 See the Supreme Court Act 1981 s 20(1)(a), (2)(e); and PARA 110. Claims in respect of damage received by a ship (as to which see s 20(1)(a), (2)(d); and PARA 110) no longer give rise to proceedings in rem, this being the combined effect of s 21(2), (4) (see heads (1) to (4) and heads (a) to (m) in the text), neither of which mentions s 20(1)(a), (2)(d).

12 The persons specified for these purposes are: (1) the owners, charterers or persons in possession or control of a ship; or (2) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible: see the Supreme Court Act 1981 s 20(1)(a), (2)(f); and PARA 112.

13 See the Supreme Court Act 1981 s 20(1)(a), (2)(f); and PARA 112.

14 See the Supreme Court Act 1981 s 20(1)(a), (2)(g); and PARA 111.

15 See the Supreme Court Act 1981 s 20(1)(a), (2)(h); and PARA 111. To fall within the provisions, an agreement must have a reasonably direct connection with the carriage of goods in a ship: *Gatol International Inc v Arkwright-Boston Manufacturers Mutual Insurance Co* [1985] AC 255, [1985] 1 All ER 129, [1985] 1 Lloyd's Rep 181, HL. See also *Petrofina SA v AOT Ltd, The Maersk Nimrod* [1992] QB 571, [1991] 3 All ER 161 (agreement relating to carriage of goods in a ship does not cover cif contract for sale of goods, since carriage of goods by sea was merely one matter to which contract related and was not its central concern).

16 See the Supreme Court Act 1981 s 20(1)(a), (2)(j)(i); and PARAS 113-114. The text refers to the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) (as to which see PARA 8) as it has effect under the Merchant Shipping Act 1995 s 224 (as to which see PARAS 878, 891 et seq): see the Supreme Court Act 1981 s 20(6)(a); and PARA 113.

17 See the Supreme Court Act 1981 s 20(1)(a), (2)(j)(ii); and PARAS 113-114.

18 See the Supreme Court Act 1981 s 20(1)(a), (2)(j)(iii); and PARAS 113-114.

19 See the Supreme Court Act 1981 s 20(1)(a), (2)(k); and PARA 125.

20 See the Supreme Court Act 1981 s 20(1)(a), (2)(l); and PARA 125.

21 See the Supreme Court Act 1981 s 20(1)(a), (2)(m); and PARA 126.

22 See the Supreme Court Act 1981 s 20(1)(a), (2)(n); and PARA 126.

23 See the Supreme Court Act 1981 s 20(1)(a), (2)(o); and PARAS 127-130.

24 See the Supreme Court Act 1981 s 20(1)(a), (2)(p); and PARAS 127, 132.

25 See the Supreme Court Act 1981 s 20(1)(a), (2)(q); and PARA 133.

26 See the Supreme Court Act 1981 s 20(1)(a), (2)(r); and PARA 134.

27 Is any such claim as is mentioned in the Supreme Court Act 1981 s 20(1)(a), (2)(e)-(r) (see heads (a) to (m) in the text): see s 21(4).

28 Supreme Court Act 1981 s 21(4)(a).

29 In determining for the purposes of the Supreme Court Act 1981 s 21(4) whether a person would be liable on an in personam claim, it must be assumed that he has his habitual residence or place of business within England and Wales: s 21(7). As to the meanings of 'England' and 'Wales' see PARA 17 note 2. As to a discussion of habitual residence in European and domestic law see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 59. As to a

person's place of business see **COMPANIES** vol 14 (2009) PARA 122. The purpose of the words 'the person who would be liable on the claim in an action in personam' is to identify the person or persons whose ship or ships may be arrested and they do not require the claimant to prove that he has a good cause of action before making an arrest: see *The St Elefterio* [1957] P 179 at 186, [1957] 2 All ER 374 at 377, [1957] 1 Lloyd's Rep 283 at 287 per Willmer J. See also *The Giuseppe di Vittorio* [1998] 1 Lloyd's Rep 136, CA. As to the origin of claims in personam see PARA 84; and as to claims in personam generally see PARA 92 et seq.

30 Supreme Court Act 1981 s 21(4)(b). See *Aluflet SA v Vinave Empresa de Navegação Marítima LDA, The Faial* [2000] 1 Lloyd's Rep 473.

31 The claim form may be served effectively upon a ship, and security obtained by the arrest of the ship even in cases where no maritime lien attaches, despite a change in ownership of the vessel between the time of issue of the claim form and service: *The Monica S* [1968] P 741, [1967] 3 All ER 740; but see the views expressed obiter in *The Banco* [1971] P 137 at 153, [1971] 1 All ER 524 at 533, [1971] 1 Lloyd's Rep 49 at 53, CA, per Lord Denning MR and at 159, 538 and 57 per Megaw LJ. See also *The Helene Roth* [1980] QB 273, [1980] 1 All ER 1078, [1980] 1 Lloyd's Rep 477, where the change in ownership of the defendant vessel was held to be no bar to the renewal of the claim form. See also *The Giuseppe di Vittorio* [1998] 1 Lloyd's Rep 136, CA.

32 'Beneficial owner' has been held to mean a person who lawfully has full possession and control, and to include a charterer by demise: *The Andrea Ursula* [1973] QB 265, [1971] 1 All ER 821, [1971] 1 Lloyd's Rep 145 (not following *The St Merriel* [1963] P 247, [1963] 1 All ER 537). This decision was not followed in *The I Congreso del Partido* [1978] QB 500 at 538-543, [1978] 1 All ER 1169 at 1201-1204, [1977] 1 Lloyd's Rep 536 at 560-562 per Goff J, where it was held that the phrase 'beneficially owned' did not apply to a demise charterer but has its ordinary meaning of equitable owner. As to beneficial ownership see also *The Nazym Khikmet* [1996] 2 Lloyd's Rep 362, CA. Where the transfer of a vessel (whether British or not) is a sham, the original owner will retain beneficial ownership: *The Tjaskemolen (now named Visvliet)* [1997] 2 Lloyd's Rep 465. See also *The Giuseppe di Vittorio* [1998] 1 Lloyd's Rep 136, CA.

33 Supreme Court Act 1981 s 21(4)(i). The 'relevant person' can be a demise charterer, even in the absence of a consensual agreement between the parties in the nature of a demise charter, if the legal relationship between the parties invests the 'relevant person' with the right of a demise charterer against the owner of the vessel: *The Giuseppe di Vittorio* [1998] 1 Lloyd's Rep 136, CA. A slot charterer of spaces on a container ship for the carriage of goods is capable of coming within the definition of a charterer in the Supreme Court Act 1981 s 21(4)(b), despite the fact that the slot charter gave control of only part of the vessel to the charterer: *The Tychy* [1999] 2 Lloyd's Rep 11, CA. See also *The Giuseppe di Vittorio*.

34 See note 31.

35 Supreme Court Act 1981 s 21(4)(ii).

36 See *The St Elefterio* [1957] P 179 at 185-186, [1957] 2 All ER 374 at 377, [1957] 1 Lloyd's Rep 283 at 287 per Willmer J (discussing the Administration of Justice Act 1956 s 3(4) (now repealed, and re-enacted, by the Supreme Court Act 1981: see now s 21(4)), the Administration of Justice Act 1956 s 3(4) having conferred this right for the first time in England). See also *The Aventicum* [1978] 1 Lloyd's Rep 184 (court empowered by the Administration of Justice Act 1956 s 3(4) (repealed: see now the Supreme Court Act 1981 s 21(4)) to look behind registered owner to determine true beneficial owner); *The Maritime Trader* [1981] 2 Lloyd's Rep 153 (ship owned by wholly-owned subsidiary company not 'beneficially owned' by defendant holding company). *The Maritime Trader* concerned a vertical relationship between a holding company and a subsidiary. The horizontal relationship between 'one-ship companies' was considered in the Court of Appeal in *The Evpo Agnic* [1988] 3 All ER 810, [1988] 1 WLR 1090, [1988] 2 Lloyd's Rep 411, CA. It has been held that the right of arrest under the Supreme Court Act 1981 s 21(4) does not extend to a ship owned by a sister company of the company owning the ship in connection with which the claim arose: see *The Nazym Khikmet* [1996] 2 Lloyd's Rep 362, CA. See also *The Giuseppe di Vittorio* [1998] 1 Lloyd's Rep 136, CA.

37 Supreme Court Act 1981 s 21(4). For a general discussion of maritime liens see PARA 1014 et seq.

38 In any such claim as is mentioned in the Supreme Court Act 1981 s 20(1)(a), (2)(e)-(r) (see heads (a) to (m) in the text): see s 21(8).

39 Supreme Court Act 1981 s 21(8). See also *The Banco* [1971] P 137, [1971] 1 All ER 524, [1971] 1 Lloyd's Rep 49, CA. A claim form naming more than one vessel must be amended when one vessel has been selected for service of the proceedings by deleting the names of the other vessels: see *The Banco*; and PARA 158. Although the Supreme Court Act 1981 s 21(8) prevents the service of an in rem claim form and arrest of more than one ship in respect of the same claim, where a ship is served with an in rem claim form and arrested in the mistaken belief that it was a ship against which a claim in rem can be brought, this will not bar a subsequent claim against and arrest of a ship against which a claim can properly be brought: *The Stephan J* [1985] 2 Lloyd's

Rep 344. The affidavit in support of the application for the second arrest should refer to the previous mistaken arrest and the reasons for it: *The Stephan J*.

40 For the purposes of the Supreme Court Act 1981 ss 20-23, unless the context otherwise requires, 'towage' and 'pilotage', in relation to an aircraft, mean towage and pilotage while the aircraft is waterborne: s 24(1). As to towage and pilotage see PARA 125.

41 Supreme Court Act 1981 s 21(5). In determining for the purpose of s 21(5) whether a person would be liable on a claim in personam, it must be assumed that he has his habitual residence or place of business within England and Wales: s 21(7).

42 The principal claims in respect of which the law recognises maritime liens are bottomry, salvage, wages, master's wages, disbursements and liabilities, and damage done by a ship: see *The Ripon City* [1897] P 226, 8 Asp MLC 304 per Gorrell Barnes J. As to the extent of Admiralty jurisdiction regarding salvage claims see PARA 113 et seq; as to wages and master's wages see PARA 127 et seq; and as to disbursements and liabilities see PARAS 131-132.

43 As to the meaning of 'other charge' (which has been held not to include a repairer's possessory lien) see *The St Merriel* [1963] P 247, [1963] 1 All ER 537, [1963] 1 Lloyd's Rep 63; and *The Acrux* [1965] P 391 at 403, [1965] 1 Lloyd's Rep 565 at 572 per Hewson J.

44 Supreme Court Act 1981 s 21(3). As to the meaning of 'ship' for these purposes see *The Alexander* (1812) 1 Dods 278; *The Silia* [1981] 2 Lloyd's Rep 534.

45 *The Bold Buccleugh* (1852) 7 Moo PCC 267; *Currie v M'Knight* [1897] AC 97, 8 Asp MLC 193, HL; *The Ripon City* [1897] P 226, 9 Asp MLC 304.

46 Supreme Court Act 1981 s 21(6). As to orders for sale see PARA 178.

47 See the Crown Proceedings Act 1947 s 29(1); and PARA 179. As to conversion into a claim in personam when proceedings are commenced inadvertently against Crown property see s 29(2); and PARA 179. See also **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 103.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(iv) Procedural Matters/94. Claims in personam ('other claims').

94. Claims in personam ('other claims').

A claim in personam¹ may be brought in the High Court in all cases that fall within the Admiralty jurisdiction of that court², except where a restriction applies³ in relation to any claim for damage, loss of life or personal injury arising out of⁴:

- 262 (1) a collision between ships⁵;
- 263 (2) the carrying out of (or omission to carry out) a manoeuvre in the case of one or more of two or more ships⁶; or
- 264 (3) non-compliance, on the part of one or more of two or more ships, with the collision regulations⁷.

The High Court must not entertain any claim in personam to enforce a claim⁸ which falls within heads (1) to (3) above unless⁹:

- 265 (a) the defendant has his habitual residence or place of business within England and Wales¹⁰;
- 266 (b) the cause of action arose within inland waters¹¹ of England and Wales or within the limits of a port¹² of England and Wales¹³; or
- 267 (c) a claim arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court¹⁴.

Nor may the High Court entertain any claim in personam to enforce a claim which falls within heads (1) to (3) above until any proceedings previously brought by the claimant in any court outside England and Wales against the same defendant in respect of the same incidents or series of incidents¹⁵ have been discontinued or otherwise come to an end¹⁶. The High Court has jurisdiction otherwise¹⁷ to entertain such a claim whenever any of the conditions specified in heads (a) to (c) above is satisfied, and the rules of court relating to the service of process outside the jurisdiction¹⁸ make such provision as may appear to the rule-making authority to be appropriate having regard to this purpose¹⁹.

The restrictions on jurisdiction contained in these provisions²⁰ do not prevent a claim or a counterclaim which is duly brought in the High Court²¹ being transferred, in accordance with the enactments in that behalf²², to some other court²³.

1 As to the origin of claims in personam see PARA 84.

2 Supreme Court Act 1981 s 21(1). As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see also PARA 93. Where claims are made in personam and the defendant is outside the jurisdiction, the exercise of jurisdiction may be inhibited because permission to serve must be granted in such cases generally: see CPR Pt 6; the Admiralty and Commercial Courts Guide para B7.1-B7.2; PARA 188; **CIVIL PROCEDURE** vol 11 (2009) PARA 156 et seq; **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 62. See also the text and notes 17-23.

Practice Direction--Admiralty Claims PD 61 para 12 ('other claims') applies to Admiralty claims which, before the coming into force of CPR Pt 61 (ie before 25 March 2002: see the Civil Procedure (Amendment No 5) Rules 2001, SI 2001/4015, r 1), would have been called claims in personam: see *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186 et seq. As to the procedure that governs Admiralty claims see PARA 157 et seq.

As to CPR Pt 61, *Practice Direction--Admiralty Claims* PD 61 and the Admiralty and Commercial Courts Guide generally see PARA 91 note 3.

3 Ie because the jurisdiction conferred by the Supreme Court Act 1981 s 21 (as to which see the text and notes 1-2) is subject to s 22 (as to which see the text and notes 4-23): see s 21(1). For the avoidance of doubt, s 22 applies in relation to the jurisdiction of the High Court not being Admiralty jurisdiction, as well as in relation to its Admiralty jurisdiction: s 22(8).

4 Supreme Court Act 1981 s 22(1).

5 Supreme Court Act 1981 s 22(1)(a). As to the meaning of 'ship' for these purposes see PARA 85 note 7.

6 Supreme Court Act 1981 s 22(1)(b).

7 Supreme Court Act 1981 s 22(1)(c). For the purposes of ss 20-23, unless the context otherwise requires, 'collision regulations' means safety regulations under the Merchant Shipping Act 1995 s 85 (see PARA 715 et seq): Supreme Court Act 1981 s 24(1) (definition amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 59(3)).

8 The Supreme Court Act 1981 s 22(2), (3) (see the text and notes 9-16) applies to counterclaims (except counterclaims in proceedings arising out of the same incident or series of incidents) as it applies to claims: s 22(4). Accordingly, in the application of s 22(2), (3) to counterclaims, references to the claimant and defendant are to be construed as references to the claimant on the counterclaim and the defendant to the counterclaim respectively: see s 22(4). However, s 22(2), (3) does not apply to any claim or counterclaim if the defendant submits or has agreed to submit to the jurisdiction of the court: s 22(5).

9 Supreme Court Act 1981 s 22(2). See note 8.

10 Supreme Court Act 1981 s 22(2)(a). See note 8. As to the position of a defendant having an agent in England see *The World Harmony* [1967] P 341, [1965] 2 All ER 139. As to the meanings of 'England' and 'Wales' see PARA 17 note 2. As to a discussion of habitual residence in European and domestic law see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 59. As to a person's place of business see **COMPANIES** vol 14 (2009) PARA 122.

11 For these purposes, 'inland waters' includes any part of the sea adjacent to the coast of the United Kingdom certified by the Secretary of State to be waters falling by international law to be treated as within the territorial sovereignty of Her Majesty apart from the operation of that law in relation to territorial waters: Supreme Court Act 1981 s 22(2). As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the Secretary of State see PARA 38. As to the extent of the territorial and non-territorial sea, the baselines used for delimitation, and associated rights see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 121 et seq.

12 For these purposes, 'port' means any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered by or under an Act to make charges in respect of ships entering it or using the facilities in it; and 'limits of a port' means the limits as fixed by or under the Act in question or, as the case may be, by the relevant charter or custom: Supreme Court Act 1981 s 22(2). 'Charges' means any charges with the exception of light dues, local light dues and any other charges in respect of lighthouses, buoys or beacons and of charges in respect of pilotage: s 22(2). As to charges in respect of lighthouses etc see PARA 65 et seq. As to harbour charges generally see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 666 et seq.

13 Supreme Court Act 1981 s 22(2)(b). See note 8.

14 Supreme Court Act 1981 s 22(2)(c). See note 8.

15 See *The World Harmony* [1967] P 341, [1965] 2 All ER 139 (where proceedings are commenced in different jurisdictions on the same day, they are treated as having been commenced at the same time and neither is previous (or subsequent) to the other).

16 Supreme Court Act 1981 s 22(3). See note 8. See also PARA 101.

17 Ie subject to the Supreme Court Act 1981 s 22(3) (see the text and notes 15-16): see s 22(6).

18 As to service of process outside the jurisdiction see note 2.

19 Supreme Court Act 1981 s 22(6).

20 Ie in the Supreme Court Act 1981 s 22: see s 22(7).

21 Ie brought in accordance with the provisions of the Supreme Court Act 1981 s 22: see s 22(7).

22 As to the provisions relating to transfer of proceedings see PARA 91.

23 Supreme Court Act 1981 s 22(7).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

94 Claims in personam ('other claims')

NOTE 2--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para B8.1-B8.3.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(v) Conflicts of Jurisdiction/A. IN GENERAL/95. Conflicts of jurisdiction in Admiralty proceedings.

(v) Conflicts of Jurisdiction

A. IN GENERAL

95. Conflicts of jurisdiction in Admiralty proceedings.

The international nature of maritime affairs, and the right to proceed in rem¹, readily produce conflicts of jurisdiction, and disputes as to the forum in which claims should be heard².

Where a claim is brought in personam³, the position is in general the same as in non-Admiralty proceedings, namely that a defendant who is liable to be served with a claim form (whether within or out of the jurisdiction) is subject to the jurisdiction of the court⁴. No such procedure exists for proceedings brought in rem, which necessarily involve service on a vessel in the territorial waters of the United Kingdom⁵. However, provided that the claim is one which by its nature may be enforced by a claim in rem⁶, service on the ship⁷ is sufficient to found jurisdiction, even in the absence of any other factor connecting the case with the United Kingdom⁸. Nevertheless, even where jurisdiction has been established by service on the defendant or on the res (that is, the subject property of the claim), the court has inherent power, preserved by statute, to order a stay of proceedings⁹.

In cases governed by the Civil Jurisdiction and Judgments Act 1982¹⁰, the court may be obliged to decline jurisdiction¹¹, although this does not prejudice the right of a claimant to take advantage of particular rules on jurisdiction contained in other international conventions¹². Further conventions apply, in particular, to: (1) claims arising out of the international carriage of passengers by sea¹³; (2) collisions at sea¹⁴; (3) oil pollution by ships¹⁵; and (4) proceedings relating to the remuneration of officers or crew of ships or aircraft¹⁶.

1 As to the origin of claims in rem see PARA 83; and as to claims in rem generally see PARA 92 et seq.

2 See generally **CONFLICT OF LAWS**.

3 Claims in personam are now referred to as 'other claims': see *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186 et seq. As to the origin of claims in personam see PARA 84; and as to claims in personam generally see PARA 92 et seq. As to the procedure that governs Admiralty claims see PARA 157 et seq.

4 See **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 95 et seq. As to cases where a court may be may be obliged to decline jurisdiction or to stay proceedings see the text and notes 10-12. The exercise of jurisdiction may be inhibited generally in cases where the defendant is outside the jurisdiction because permission to serve must be granted in such cases: see CPR Pt 6; *Practice Direction--Service out of the Jurisdiction* PD 6B; the Admiralty and Commercial Courts Guide para B7.1-B7.2; **CIVIL PROCEDURE** vol 11 (2009) PARA 156 et seq; **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 62.

5 As to service of the in rem claim form see PARA 160. An order will not be made for substituted service of an in rem claim form: *The Good Herald* [1987] 1 Lloyd's Rep 236. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the territorial waters of the United Kingdom see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 121 et seq; **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

6 Ie provided it is a claim as mentioned in the Supreme Court Act 1981 s 20(1)(a), (2)(a)-(c), (e)-(s) (see PARAS 93, 104 et seq), or there is a maritime lien or other charge on the ship (see s 21(2)-(4); and PARA 93).

7 Ie or, in some cases, on a sister ship: see the Supreme Court Act 1981 s 21(4); and PARA 93.

8 See PARA 86.

9 See the Supreme Court Act 1981 s 49(3); the Civil Jurisdiction and Judgments Act 1982 s 49; and **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 130 et seq. For the circumstances in which a stay may be ordered see PARA 100 et seq. The court also has specific statutory powers under the Arbitration Act 1996 s 9 to stay proceedings brought in breach of an arbitration agreement: see **ARBITRATION** vol 2 (2008) PARA 1222. As to arbitration agreements see PARA 103.

10 The Civil Jurisdiction and Judgments Act 1982, as amended and supplemented by the Civil Jurisdiction and Judgments Order 2001, SI 2001/3929, makes provision for EC Council Regulation 44/2001 (OJ L12, 16.01.2001, p 1) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the 'Brussels I' Regulation') and preserves the effect of the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Lugano, 16 September 1988, OJ L319, 25.11.88, p 9) (the 'Lugano Convention'): see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65 et seq.

11 See PARA 96 et seq. In one sense, the rules of the 'Brussels I' Regulation and of the Lugano Convention, and subordinate legislation relating to them, may be seen as a partial definition or redefinition of whether it is lawful to serve process upon a defendant: see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 95.

12 See **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 125. But the provisions of the Regulation and of the Convention as to *lis alibi pendens* (see PARA 101) may still operate to prevent the exercise of such jurisdiction: Case C-406/92 *The Tatry (cargo owners) v The Maciej Rataj (owners)* [1994] ECR I-5439, [1995] All ER (EC) 229, ECJ.

13 See the Merchant Shipping Act 1995 s 183(1), which gives effect to the Convention relating to the Carriage of Passengers and their Luggage by Sea (Athens, 13 December 1974; Misc 27 (1975); Cmnd 6326), as set out in the Merchant Shipping Act 1995 s 183, Sch 6 (see generally **CARRIAGE AND CARRIERS**). See also the Carriage of Passengers and their Luggage by Sea (Interim Provisions) Order 1980, SI 1980/1092 (amended by SI 1987/670).

14 See the Supreme Court Act 1981 s 22 (cited in PARA 94), which is based on the International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction in matters of Collision (Brussels, 10 May 1952; TS 47 (1960); Cmnd 1128) (as to which see PARA 8).

15 See the Merchant Shipping Act 1995 (particularly s 166); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 456.

16 See the Consular Relations Act 1968 s 4, and Orders in Council made thereunder, giving effect to a number of international agreements entered into by the United Kingdom; and see PARA 128. See also **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 303.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

95 Conflicts of jurisdiction in Admiralty proceedings

NOTE 4--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para B8.1-B8.3.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(v) Conflicts of Jurisdiction/B. EFFECT OF THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982/96. Cases governed by the Civil Jurisdiction and Judgments Act 1982.

B. EFFECT OF THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982

96. Cases governed by the Civil Jurisdiction and Judgments Act 1982.

The Civil Jurisdiction and Judgments Act 1982¹ makes provision for EC Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the 'Brussels I' Regulation')² and preserves the effect of the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (the 'Lugano Convention')³. Accordingly, it assumes fundamental importance in determining the jurisdiction of the court in cases where one or more of the parties is domiciled in a Regulation or contracting state⁴, and where the courts of another Regulation or contracting state are already seised of the same or a related matter⁵.

However, neither the 'Brussels I' Regulation nor the Lugano Convention contains provisions specifically concerned with maritime matters⁶, and no distinction is drawn between Admiralty claims in personam and those in rem⁷. It is assumed that the English courts will apply the Regulation and Convention equally to Admiralty claims in personam and in rem⁸.

1 Ie the Civil Jurisdiction and Judgments Act 1982, as amended and supplemented by the Civil Jurisdiction and Judgments Order 2001, SI 2001/3929: see PARA 95.

2 Ie EC Council Regulation 44/2001 (OJ L12, 16.01.2001, p 1) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the 'Brussels I' Regulation'): see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65 et seq. The 'Brussels I' Regulation has replaced in its entirety the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Brussels, 27 September 1968; Cmnd 7395), which it resembled in all essential respects.

3 Ie the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Lugano, 16 September 1988, OJ L319, 25.11.88, p 9) (the 'Lugano Convention'), which was signed by the United Kingdom on 18 September 1989: see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65 et seq. The Lugano Convention enables European Free Trade Association countries, subject to minor modifications, to join the regime that was established by the Brussels Convention (see now the 'Brussels I' Regulation): see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65 et seq.

4 As to jurisdiction based on domicile for these purposes see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 83 et seq. As to the meanings of 'contracting state' and 'Regulation state' see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65.

5 See **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 127 et seq.

6 Nevertheless, certain provisions have been held to have the effect of indirectly incorporating into English law the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships (Brussels, 10 May, 1952; Cmd 8954): see *The Nordglint* [1988] 1 QB 183, [1988] 2 All ER 531, [1987] 2 Lloyd's Rep 470 (overruled on other grounds by the House of Lords in *India (Republic) v India Steamship Co Ltd (Indian Endurance and Indian Grace) (No 2)* [1998] AC 878, [1997] 4 All ER 380, HL); *The Deichland* [1990] 1 QB 361, [1989] 2 All ER 1066, CA; and *The Anna H* [1994] 1 Lloyd's Rep 287; *The Bergen* [1997] 1 Lloyd's Rep 380.

7 Claims in personam are now referred to as 'other claims': see *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186 et seq. The European Court of Justice has held that, for the purposes of the Brussels Convention (as to which see note 2), the distinction drawn by the law of a contracting state between a claim in rem and a claim in personam (a peculiarly common law distinction not recognised in civil law jurisdictions) is not material: Case C-406/92 *The Maciej Rataj* [1995] All ER (EC) 229, [1995] 1 Lloyd's Rep 302, ECJ. As to the origin of claims in rem see PARA 83; as to the origin of claims in personam see PARA 84; and as to claims in rem

and claims in personam generally see PARA 92 et seq. As to the procedure that governs Admiralty claims see PARA 157 et seq.

8 This would be consistent with the reasoning of the Court of Appeal in *The Deichland* [1990] 1 QB 361, [1989] 2 All ER 1066, CA, in which the court's overriding consideration seems to have been to give the words used in the Brussels Convention (as to which see note 2) a broad and purposive construction which would not be thwarted by peculiar concepts of national law. It is not clear, however, whether the same reasoning would apply to a claim which is truly in rem, when it really is the ship that is being sued. The court may not wish to make any distinctions between claims quasi in rem and claims truly in rem in order to be consistent with the overall scheme and purpose of the 'Brussels I' Regulation and the Lugano Convention, which is to prevent conflicting judgments.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(v) Conflicts of Jurisdiction/B. EFFECT OF THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982/97. Claims in rem under the Civil Jurisdiction and Judgments Act 1982.

97. Claims in rem under the Civil Jurisdiction and Judgments Act 1982.

The 'Brussels I' Regulation¹ and the Lugano Convention² are silent on the question of Admiralty proceedings in rem³, and no guidance is given in the Civil Jurisdiction and Judgments Act 1982 itself⁴. The traditional view was that the defendant in an Admiralty action in rem (now a claim in rem) is the ship itself, and not the owners or other persons interested in it⁵. Although ships are frequently arrested at the same time as being served with proceedings in rem, arrest is normally unnecessary in order to found jurisdiction, for which service alone is sufficient⁶. However, it had been held that special features of English Admiralty law could not affect the interpretation of the predecessor Brussels Convention⁷, and that the court's jurisdiction may be contested if the owner of the ship, or other person liable to be adversely affected by the result of the proceedings, is domiciled in another contracting state⁸.

Both the 'Brussels I' Regulation and the Lugano Convention provide that they do not affect any other conventions to which the contracting states are or will be parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments⁹. It has been held that these include the International Convention relating to the Arrest of Sea-going Ships 1952 (the 'Brussels Arrest Convention')¹⁰, which makes provision¹¹ for the courts of a country in which a ship is arrested to have jurisdiction to determine the case on its merits¹². Consequently, where a ship can be arrested in the United Kingdom in proceedings in rem¹³, and is so arrested, the court will retain jurisdiction based upon the arrest, irrespective of the domicile of the shipowner or other person interested in the res (that is, the subject property of the claim)¹⁴. Another Convention held to be included is the International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction in matters of Collision¹⁵, which goes further than the Brussels Arrest Convention in one important respect: the court will retain jurisdiction if the vessel could have been arrested but was not because bail or other security was furnished¹⁶.

1 I.e. EC Council Regulation 44/2001 (OJ L12, 16.01.2001, p 1) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the 'Brussels I' Regulation'): see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65 et seq. The 'Brussels I' Regulation has replaced in its entirety the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Brussels, 27 September 1968; Cmnd 7395), which it resembled in all essential respects.

2 I.e. the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Lugano, 16 September 1988, OJ L319, 25.11.88, p 9) (the 'Lugano Convention'), which was signed by the United Kingdom on 18 September 1989: see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65 et seq. The Lugano Convention enables European Free Trade Association countries, subject to minor modifications, to join the regime that was established by the Brussels Convention (see now the 'Brussels I' Regulation): see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65 et seq.

3 As to the origin of claims in rem see PARA 83; and as to claims in rem generally see PARA 92 et seq. As to the procedure that governs Admiralty claims see PARA 157 et seq.

4 I.e. the Civil Jurisdiction and Judgments Act 1982, as amended and supplemented by the Civil Jurisdiction and Judgments Order 2001, SI 2001/3929: see PARA 95. The Civil Jurisdiction and Judgments Act 1982 s 26 makes provision regarding security obtained in an Admiralty claim where proceedings are stayed, but otherwise makes no express reference to Admiralty proceedings: see PARA 85.

5 See PARA 92.

6 *The Nautik* [1895] P 121.

7 *Ie* the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Brussels, 27 September 1968; Cmnd 7395), which the 'Brussels I' Regulation has replaced in its entirety: see PARA 96.

8 *The Deichland* [1990] 1 QB 361, [1989] 2 All ER 1066, CA, where it was held that in such circumstances the owner, or other interested person, is 'sued' within the meaning of the Civil Jurisdiction and Judgments Act 1982. As to the meaning of 'contracting state' see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65.

9 See PARA 95.

10 *Ie* the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships (Brussels, 10 May, 1952; Cmnd 8954) (as to which see PARA 8).

11 *Ie* by the International Convention Relating to the Arrest of Sea-Going Ships art 7. Although this convention has not been enacted verbatim in the United Kingdom, the Administration of Justice Act 1956 s 3 (repealed) contained provisions enacted for the purpose of giving effect to it, and these provisions are now re-enacted in similar terms in the Supreme Court Act 1981 s 21 (as to which see PARA 93). See further *The Eschersheim* [1976] 1 All ER 920, [1976] 1 WLR 430, HL.

12 *The Nordglimt* [1988] 1 QB 183, [1988] 2 All ER 531, [1987] 2 Lloyd's Rep 470 (overruled on other grounds in *India (Republic) v India Steamship Co Ltd (Indian Endurance and Indian Grace) (No 2)* [1998] AC 878, [1997] 4 All ER 380, HL); *The Deichland* [1990] 1 QB 361, [1989] 2 All ER 1066, CA; *The Anna H* [1994] 1 Lloyd's Rep 287; *The Bergen* [1997] 1 Lloyd's Rep 380. In establishing jurisdiction over a claim in rem, the Brussels Arrest Convention 1952 requires only that the legal consequences of the detention of a ship are that it becomes security for a maritime claim and not that a claimant's commercial motive has to be to obtain security: *The Anna H*.

See also *Steamship Mutual Underwriting Association (Bermuda) Ltd v Owners of the Cargo Lately Laden on Board the Vessel 'Jutha Rajpruek'* [2003] EWCA Civ 378, (2003) Times, 19 March, sub nom *The Juntha Rajpruek* [2003] 2 Lloyd's Rep 107 (in most jurisdictions subject to the Arrest Convention 1952, jurisdiction was established by arrest of the ship; the fact that the defendant's undertaking was conditional upon cargo owners not arresting the ship inevitably meant that the defendant undertook to accept service in respect of proceedings before courts which had not yet become seized of the action).

13 *Ie* provided it is a claim as mentioned in the Supreme Court Act 1981 s 20(1)(a), (2)(a)-(c), (e)-(s) (see PARAS 93, 104 et seq), or there is a maritime lien or other charge on the ship (see s 21(2)-(4); and PARA 93).

14 See *The Deichland* [1990] 1 QB 361, [1989] 2 All ER 1066, CA, where the claimant accepted security in lieu of arrest, and the mere fact that the vessel could have been arrested was held insufficient to found jurisdiction.

15 *Ie* the International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction in matters of Collision (Brussels, 10 May 1952; Cmnd 1128) (as to which see PARA 8).

16 *The Po* [1991] 2 Lloyd's Rep 206, CA.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(v) Conflicts of Jurisdiction/B. EFFECT OF THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982/98. Claims in personam under the Civil Jurisdiction and Judgments Act 1982.

98. Claims in personam under the Civil Jurisdiction and Judgments Act 1982.

Where a claim is brought in personam¹ under the Civil Jurisdiction and Judgments Act 1982², the position is in general the same as in non-Admiralty proceedings, namely that a defendant who is liable to be served with a claim form (whether within or out of the jurisdiction) is subject to the jurisdiction of the court³.

1 Claims in personam are now referred to as 'other claims': see *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186 et seq. As to the origin of claims in personam see PARA 84; and as to claims in personam generally see PARA 92 et seq. As to the procedure that governs Admiralty claims see PARA 157 et seq.

2 I.e. the Civil Jurisdiction and Judgments Act 1982, as amended and supplemented by the Civil Jurisdiction and Judgments Order 2001, SI 2001/3929: see PARA 95.

3 See **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 95 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(v) Conflicts of Jurisdiction/B. EFFECT OF THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982/99. Stay of proceedings under the Civil Jurisdiction and Judgments Act 1982.

99. Stay of proceedings under the Civil Jurisdiction and Judgments Act 1982.

The 'Brussels I' Regulation¹ and the Lugano Convention² provide that, where proceedings involving the same cause of action and between the same parties are brought in the courts of different Regulation or contracting states³, any court other than the court first seised must of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established⁴. Where the jurisdiction of the court first seised is established, any court other than the court first seised must decline jurisdiction in favour of that court⁵. Where 'related actions'⁶ are brought in the courts of different Regulation or contracting states, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings⁷.

The above provisions apply irrespective of whether the defendant is domiciled in a Regulation or contracting state⁸. The English court will be 'seised' of proceedings in rem⁹ when the claim form is served¹⁰. This is probably also true for claims in personam¹¹.

These provisions do not preclude the issue and service on a ship in the United Kingdom of a claim form in rem, and the words 'decline jurisdiction' have been interpreted in this context to mean 'decline to exercise jurisdiction'¹². However, the European Court of Justice has held that, for the purposes of the Civil Jurisdiction and Judgments Act 1982, the distinction drawn by the law of a Regulation or contracting state between a claim in rem and a claim in personam is immaterial¹³. Where the parties and cause of action are the same, the court's approach depends solely on which court was first seised of the matter, and questions of forum conveniens¹⁴ have no application¹⁵.

1 Ie EC Council Regulation 44/2001 (OJ L12, 16.01.2001, p 1) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the 'Brussels I' Regulation'); see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65 et seq. The 'Brussels I' Regulation has replaced in its entirety the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Brussels, 27 September 1968; Cmnd 7395), which it resembled in all essential respects.

2 Ie the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Lugano, 16 September 1988, OJ L319, 25.11.88, p 9) (the 'Lugano Convention'), which was signed by the United Kingdom on 18 September 1989: see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65 et seq. The Lugano Convention enables European Free Trade Association countries, subject to minor modifications, to join the regime that was established by the Brussels Convention (see now the 'Brussels I' Regulation): see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65 et seq.

3 As to the meanings of 'contracting state' and 'Regulation state' see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65.

4 See the 'Brussels I' Regulation art 27; the Lugano Convention art 21; and **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 128.

5 See the 'Brussels I' Regulation art 27; the Lugano Convention art 21; and **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 128. These provisions do not apply where a situation is governed by a specialised Convention unless that Convention does not contain provisions regarding proceedings pending in other jurisdictions: Case C-406/92 *The Maciej Rataj* [1995] All ER (EC) 229, [1995] 1 Lloyd's Rep 302, ECJ; applied in *Frans Maas Logistics (UK) Ltd v CDR Trucking BV* [1999] 2 Lloyd's Rep 179, [1999] 1 All ER (Comm) 737.

6 In *Sarrio SA v Kuwait Investment Authority* [1999] 1 AC 32, [1997] 4 All ER 929, [1998] 1 Lloyd's Rep 129, HL, the House of Lords held that in determining whether proceedings were 'related' for the purposes of the Brussels Convention art 22 (see now the 'Brussels I' Regulation art 28; and the Lugano Convention art 22) the

court should apply the wide test set out therein, which was designed to cover a range of circumstances, from cases where the matters before the courts were virtually identical to cases where the connection was close enough to make it expedient for them to be heard and determined together.

7 See the 'Brussels I' Regulation art 28; the Lugano Convention art 22; and **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 129.

8 Case C-351/89 *Overseas Union Insurance Ltd v New Hampshire Insurance Co* [1992] 1 QB 434, [1991] ECR I-3317, ECJ.

9 As to the origin of claims in rem see PARA 83; and as to claims in rem generally see PARA 92 et seq. As to the procedure that governs Admiralty claims see PARA 157 et seq.

10 *The Nord Sea and Freccia Del Nord* [1989] 1 Lloyd's Rep 388.

11 See *Dresser UK Ltd v Falcongate Freight Management Ltd, The Duke of Yare* [1992] QB 502, [1992] 2 All ER 450, CA. The Court of Appeal in this case stated that there might be exceptions to this rule, for example if an exercise of jurisdiction (such as a freezing order) preceded service. However, a differently constituted Court of Appeal in *Neste Chemicals SA v DK Line SA, The Sargasso* [1994] 3 All ER 180, [1994] 2 Lloyd's Rep 6, CA, disapproved the propositions that there might be exceptions to the time of service rule.

Claims in personam are now referred to as 'other claims': see *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186 et seq. As to the origin of claims in personam see PARA 84; and as to claims in personam generally see PARA 92 et seq.

12 *The Linda* [1988] 1 Lloyd's Rep 175 at 178 per Sheen J.

13 Case C-406/92 *The Maciej Rataj* [1995] All ER (EC) 229, [1995] 1 Lloyd's Rep 302, ECJ.

14 As to the doctrine of forum non conveniens see PARA 100.

15 *The Linda* [1988] 1 Lloyd's Rep 175 at 179-180 per Sheen J. Nothing in the Civil Jurisdiction and Judgments Act 1982 prevents any court in the United Kingdom from staying, sisting, striking out or dismissing any proceedings before it, on the ground of forum non conveniens or otherwise, where to do so is not inconsistent with the 'Brussels I' Regulation or the Lugano Convention: see the Civil Jurisdiction and Judgments Act 1982 s 49; and **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 130 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(1) INTRODUCTION/(v) Conflicts of Jurisdiction/C. STAY OF PROCEEDINGS UNDER NATIONAL LAW/100. Forum non conveniens.

C. STAY OF PROCEEDINGS UNDER NATIONAL LAW

100. Forum non conveniens.

Subject to the Civil Jurisdiction and Judgments Act 1982¹, the court may stay proceedings if there is another forum in which the case can be more conveniently tried². Account is taken not only of convenience and expense, but also of other factors, such as the law governing the transaction, which point to the most appropriate or natural forum³. In ascertaining the most appropriate forum, the court searches for the country with which the case has its most real and substantial connection⁴.

If a foreign court is found to be a more appropriate forum, a stay may still be refused if its effect would be to deprive the claimant of some real and legitimate personal or juridical advantage available to him by suing in England⁵. A common instance of this in Admiralty proceedings is the opportunity for the claimant to secure his claim by the arrest of the vessel in a claim in rem⁶. Other examples from the decided cases are the availability in England of a more generous limitation period⁷, a speedier or cheaper trial⁸, a more generous measure of damages⁹, or a more favourable rule of substantive law¹⁰. Particular weight may be attached to juridical advantages which do not involve a corresponding disadvantage to the defendant¹¹. Normally, however, the court will not compare the quality of justice available in England with that dispensed elsewhere, and allegations that a fair trial would not be obtainable in the foreign jurisdiction must be supported by cogent evidence¹².

Ultimately, the court's task is to weigh the balance of factors both for and against a stay¹³, so that even if the claimant can point to a legitimate advantage in suing in England, this will not be decisive if another jurisdiction is clearly the more appropriate forum¹⁴.

1 As to cases which are subject to the Civil Jurisdiction and Judgments Act 1982 see PARA 96.

2 English law on this topic has developed considerably to the point where it is now indistinguishable from the (originally) Scottish legal doctrine of forum non conveniens: *The Abidin Daver* [1984] AC 398 at 411, [1984] 1 All ER 470 at 476, HL, per Lord Diplock; *Spiliada Maritime Corp v Cansulex Ltd*, *The Spiliada* [1987] AC 460 at 474, [1986] 3 All ER 843 at 854, HL, per Lord Goff of Chieveley. See also *Re Harrods (Buenos Aires) Ltd* [1992] Ch 72, [1991] 4 All ER 334, CA; and *Ace Insurance SA-NV v Zurich Insurance Co* [2001] EWCA Civ 173, [2001] 1 All ER (Comm) 802, [2001] 1 Lloyd's Rep 618 (affg *Ace Insurance SA-NV v Zurich Insurance Co* [2000] 2 All ER (Comm) 449, [2000] 2 Lloyd's Rep 423), where it was held that the court had jurisdiction to stay on the grounds of forum non conveniens in favour of a non-contracting state even though the defendant was domiciled and correctly sued in a contracting state under the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Lugano, 16 September 1988, OJ L319, 25.11.88, p 9) (the 'Lugano Convention') (see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65 et seq). As to forum non conveniens see further **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 131.

3 *Spiliada Maritime Corp v Cansulex Ltd*, *The Spiliada* [1987] AC 460 at 474 et seq, [1986] 3 All ER 843 at 854 et seq, HL, per Lord Goff of Chieveley.

4 See *Spiliada Maritime Corp v Cansulex Ltd*, *The Spiliada* [1987] AC 460, [1986] 3 All ER 843, HL.

5 See *Rockware Glass Ltd v MacShannon* [1978] AC 795, [1978] 1 All ER 625, HL.

6 See *The Atlantic Star* [1974] AC 436 at 454, [1973] 2 All ER 175 at 182, HL, per Lord Reid; *The Wladyslaw Lokietek* [1978] 2 Lloyd's Rep 520 at 540 per Brandon J; *The El Amria* [1981] 2 Lloyd's Rep 119, CA. This factor may not, however, carry weight if the defendant undertakes to provide equivalent security for the claim, or

counterclaim, against him in foreign proceedings: *The Abidin Daver* [1984] AC 398, [1984] 1 All ER 470, HL. As to the origin of claims in rem see PARA 83; and as to claims in rem generally see PARA 92 et seq.

7 *Spiliada Maritime Corp v Cansulex Ltd, The Spiliada* [1987] AC 460 at 483, [1986] 3 All ER 843 at 860, HL, per Lord Goff of Chieveley. It is otherwise if the claimant has acted unreasonably in allowing the claim to become time-barred in the foreign jurisdiction: see *Spiliada Maritime Corp v Cansulex Ltd, The Spiliada* at 483 and 860 per Lord Goff of Chieveley.

8 *Rockware Glass Ltd v MacShannon* [1978] AC 795 at 814-815, [1978] 1 All ER 625 at 632-633, HL, per Lord Diplock; *The Jalakrishna* [1983] 2 Lloyd's Rep 628; *The Vishva Ajay* [1989] 2 Lloyd's Rep 558.

9 *The Jalakrishna* [1983] 2 Lloyd's Rep 628. However, the court will not refuse to stay proceedings on the ground that the other forum would limit recovery to a lesser amount than that available in England by applying an alternative convention: see *The Herceg Novi v Ming Galaxy* [1998] 4 All ER 238, [1998] 2 Lloyd's Rep 454, CA; approving *The Kapitan Shvetsov* [1998] 1 Lloyd's Rep 199, CA.

10 *The Atlantic Star* [1974] AC 436 at 468, [1973] 2 All ER 175 at 194, HL, per Lord Wilberforce; *Power Curber International Ltd v National Bank of Kuwait* [1981] 3 All ER 607, [1981] 1 WLR 1233, CA (where it was held that English rules as to choice of law would result in summary judgment for the claimant).

11 *The Efthimis* [1986] 1 Lloyd's Rep 244 (where proceedings in England resulted in all relevant claims being dealt with in one action).

12 *The Abidin Daver* [1984] AC 398, [1984] 1 All ER 470, HL; *The El Amria* [1981] 2 Lloyd's Rep 119, CA.

13 *The Abidin Daver* [1984] AC 398 at 419, [1984] 1 All ER 470 at 482, HL, per Lord Brandon of Oakbrook.

14 See eg *Trendtex Trading Corp v Crédit Suisse* [1980] QB 629, [1980] 3 All ER 721, CA; affd [1982] AC 679, [1981] 3 All ER 520, HL, where the advantages of wider ranging discovery of documents in England was outweighed by overwhelming connections with Switzerland.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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101. *Lis alibi pendens*.

Subject to the Civil Jurisdiction and Judgments Act 1982¹, the court may intervene to prevent possible injustice where two claims are pending, one in England and the other in a foreign country between the same parties².

Where the two claims are begun by different parties, the court may stay the English proceedings on grounds which in principle are those of *forum non conveniens*³. A stay will not necessarily be ordered by reason only that proceedings were instituted first in the foreign jurisdiction⁴, or that the refusal of a stay would result in a multiplicity of proceedings⁵. The fact that proceedings are already pending abroad will, however, weigh in the scales in favour of granting a stay, particularly if substantial progress in the foreign proceedings has already been made⁶.

Where both claims have been begun by the same party, the court may more readily stay the English proceedings, particularly if it results in no additional advantage to the claimant⁷. Alternatively, the claimant will be required to elect which set of proceedings he wishes to pursue, and if he elects to pursue the proceedings abroad, the English claim will be dismissed and not merely stayed⁸. The court may also grant an injunction restraining the institution⁹ or continuance¹⁰ of foreign proceedings.

Whilst the foregoing principles are of general application, the court is specifically precluded by statute from entertaining any claim in personam¹¹ to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships¹², or out of certain other matters¹³, unless any foreign proceedings previously brought by the claimant against the defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end¹⁴.

1 As to cases which are subject to the Civil Jurisdiction and Judgments Act 1982 see PARA 96.

2 *Kennedy v Earl of Cassillis* (1818) 2 Swan 313; *McHenry v Lewis* (1882) 22 ChD 397, CA; *Hyman v Helm* (1883) 24 ChD 531, CA. Cf *The Atlantic Star* [1974] AC 436, [1973] 2 All ER 175, HL, where the parties were not identical but similar principles were applied.

3 As to the doctrine of *forum non conveniens* see PARA 100.

4 *The Coral Isis* [1986] 1 Lloyd's Rep 413.

5 *The Efthimis* [1986] 1 Lloyd's Rep 244, CA.

6 *The Abidin Daver* [1984] AC 398, [1984] 1 All ER 470, HL.

7 *The Atlantic Star* [1974] AC 436, [1973] 2 All ER 175, HL; *McHenry v Lewis* (1882) 22 ChD 397, CA; *Peruvian Guano Co v Bockwoldt* (1883) 23 ChD 225, CA; *Ionian Bank Ltd v Couvreur* [1969] 2 All ER 651, [1969] 1 WLR 781, CA. It is, however, no longer necessary for the proceedings to be vexatious or oppressive: *The Abidin Daver* [1984] AC 398 at 411, [1984] 1 All ER 470 at 476, HL, per Lord Diplock; *Spiliada Maritime Corp v Cansulex Ltd*, *The Spiliada* [1987] AC 460 at 474, [1986] 3 All ER 843 at 854, HL, per Lord Goff of Chieveley.

8 *Australian Commercial Research and Development Ltd v ANZ McCaughan Merchant Bank Ltd* [1989] 3 All ER 65.

9 *Lord Portarlington v Soulby* (1834) 3 My & K 104.

10 *Wharton v May* (1799) 5 Ves 27 at 71; *Bushby v Munday* (1821) 5 Madd 297; *Harrison v Gurney* (1821) 2 Jac & W 563; *Beauchamp v Marquess of Huntley* (1822) Jac 546; *Beckford v Kemble* (1822) 1 Sim & St 7; *Lord Portarlington v Soulby* (1834) 3 My & K 104; *Jones v Geddes* (1845) 1 Ph 724; *Carron Iron Co v Maclaren* (1855) 5 HL Cas 416; *Dawkins v Simonetti* (1880) 50 LJP 30, CA; *McHenry v Lewis* (1882) 22 ChD 397, CA; *Hyman v Helm* (1883) 24 ChD 531, CA; *Vardopulo v Vardopulo* (1909) 25 TLR 518, CA; *Heilmann v Falkenstein* (1917) 33 TLR 383; *Cohen v Rothfield* [1919] 1 KB 410, CA; *Orr-Lewis v Orr-Lewis* [1949] P 347, [1949] 1 All ER 504; *The Soya Margareta* [1960] 2 All ER 756, [1961] 1 WLR 709; *Settlement Corp v Hochschild* [1966] Ch 10, [1965] 3 All ER 486. The injunction restraining the foreign proceedings is addressed to the claimant in those proceedings, not to the foreign court itself: *Bushby v Munday* (1821) 5 Madd 297; cf *Love v Baker* (1665) 1 Cas in Ch 67. Such relief is, however, only sparingly granted, and will not be ordered unless it would be unconscionable for the claimant to maintain the proceedings abroad: see *Castanho v Brown & Root (UK) Ltd* [1981] AC 557, [1981] 1 All ER 143, [1981] 1 Lloyd's Rep 113, HL; *British Airways Board v Laker Airways Ltd* [1985] AC 58, [1984] 3 All ER 39, HL; cf *Smith Kline & French Laboratories Ltd v Bloch* [1983] 2 All ER 72, [1983] 1 WLR 730, CA.

11 Claims in personam are now referred to as 'other claims': see *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186 et seq. As to the origin of claims in personam see PARA 84; and as to claims in personam generally see PARA 92 et seq. As to the procedure that governs Admiralty claims see PARA 157 et seq.

12 See the Supreme Court Act 1981 s 22(1)(a); and PARA 94.

13 I.e. the carrying out of (or omission to carry out) a manoeuvre in the case of one or more of two or more ships (see the Supreme Court Act 1981 s 22(1)(b); and PARA 94) or non-compliance, on the part of one or more of two or more ships, with the collision regulations (see s 22(1)(c); and PARA 94). As to the meaning of 'collision regulations' for these purposes see PARA 94 note 7.

14 See the Supreme Court Act 1981 s 22(3); and PARA 94.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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102. Stay of proceedings under a foreign jurisdiction clause.

The court may stay proceedings in England where these are brought in breach of an agreement to refer disputes to the exclusive jurisdiction of a foreign tribunal¹. The court is not bound to grant a stay but has a discretion whether to do so or not². The conditions material to the exercise of the court's discretion whether to grant a stay or not do not differ in substance from the exercise of the court's discretion upon an application to set aside service of a claim form by reason of such a clause. The factors relevant to the exercise of the discretion are also broadly similar to the criteria considered under the doctrine of forum non conveniens³. However, the position is not precisely the same, for it is a prima facie rule that the parties should honour their agreement to refer disputes to the foreign tribunal, and accordingly the burden is on the claimant, or in the case of a counterclaim, on the defendant, to show a strong cause for a stay to be refused⁴.

The following matters are relevant in considering the exercise of the discretion to stay: (1) the country in which the evidence on the issues of fact is situated, or more readily available, and the effect of that on the relative convenience and expense of a trial as between the English and the foreign courts; (2) whether the law of the foreign court applies and, if so, whether it differs from English law in any material respects; (3) with what country either party is connected, and how closely; (4) whether the defendants genuinely desire trial in the foreign country, or are only seeking procedural advantages; and (5) whether the claimants would be prejudiced by having to sue in the foreign court because they would: (a) be deprived of security for their claim; (b) be unable to enforce any judgment obtained; (c) be faced with a time bar not applicable in England; or (d) for political, racial, religious or other reasons be unlikely to get a fair trial⁵.

1 *The Eleftheria* [1970] P 94, [1969] 2 All ER 641, [1969] 1 Lloyd's Rep 237; *Aratra Potato Co Ltd v Egyptian Navigation Co, The El Amria* [1981] 2 Lloyd's Rep 119, CA. See also *DSV Silo-und Verwaltungsgesellschaft mbH v Sennar (Owners), The Sennar* [1985] 2 All ER 104 at 111, [1985] 1 WLR 490 at 500, [1985] 1 Lloyd's Rep 521 at 527, HL, per Lord Brandon of Oakbrook.

2 See the cases cited in note 1.

3 As to the doctrine of forum non conveniens see PARA 100.

4 *Trendtex Trading Corp'n v Crédit Suisse* [1980] QB 629, [1980] 3 All ER 721, CA; affd [1982] AC 679, [1981] 3 All ER 520, HL.

5 *The Eleftheria* [1970] P 94 at 100, [1969] 2 All ER 641 at 645, [1969] 1 Lloyd's Rep 237 at 242 per Brandon J; *Aratra Potato Co Ltd v Egyptian Navigation Co, The El Amria* [1981] 2 Lloyd's Rep 119, CA. See also *The Chaparral* [1968] 2 Lloyd's Rep 158, CA, and the proceedings in the same case in the United States Supreme Court, *The Chaparral* [1972] 2 Lloyd's Rep 315. See also **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 137.

As to the position where a contract contained an exclusive jurisdiction clause but the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Brussels, 27 September 1968; Cmd 7395) (see now the 'Brussels I' Regulation; and PARA 96 et seq) applied see *Hough v P & O Containers Ltd* [1999] QB 834, [1998] 2 All ER 978; and **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 79.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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103. Stay of proceedings under an arbitration agreement.

A party to an arbitration agreement¹, against whom legal proceedings are brought, whether by way of a claim or counterclaim, in respect of a matter which under the agreement is to be referred to arbitration may, upon notice to the other parties to the proceedings, apply to the court in which proceedings have been brought to stay the proceedings as far as they concern that matter². The court must³ grant a stay unless satisfied that the arbitration agreement is null and void⁴, inoperative⁵, incapable of being performed⁶, or if there is not in fact any dispute between the parties⁷.

1 For these purposes, 'arbitration agreement' means an agreement to submit to arbitration present or future disputes, whether they are contractual or not: see the Arbitration Act 1996 s 6(1); and **ARBITRATION** vol 2 (2008) PARA 1213.

2 See the Arbitration Act 1996 s 9(1); and **ARBITRATION** vol 2 (2008) PARA 1222.

3 As from a day to be appointed under the Arbitration Act 1996 s 109(1), s 86 has the effect of taking domestic arbitration agreements outside s 9(4) (see the text and notes 4-6), thereby giving the court a discretion whether or not to stay the proceedings: see s 86; and **ARBITRATION** vol 2 (2008) PARA 1222. At the date at which this volume states the law, no such day had been appointed. As to the meaning of 'domestic arbitration agreement' for these purposes see s 85(2) (not yet in force); and **ARBITRATION** vol 2 (2008) PARA 1222.

4 As to the position where the Hague-Visby Rules apply see *The Hollandia* [1983] 1 AC 565 at 575-576, [1982] 3 All ER 1141 at 1146-1147, HL, per Lord Diplock. As to the Hague-Visby Rules see **CARRIAGE AND CARRIERS**.

5 See *The Merak* [1965] P 223 at 239, [1964] 3 All ER 638 at 648-649, [1964] 2 Lloyd's Rep 283 at 294 per Scarman J (decided under the Arbitration Act 1950 s 4 (repealed)); *Astro Valiente Compania Naviera SA v Pakistan Ministry of Food and Agriculture (No 2)* [1982] 1 All ER 823, [1982] 1 WLR 1096 (decided under the Arbitration Act 1975; see now the Arbitration Act 1996).

6 See the Arbitration Act 1996 s 9(4); and **ARBITRATION** vol 2 (2008) PARA 1222. The words 'incapable of being performed' refer only to the question whether an arbitration agreement is capable of being performed up to the stage when it results in an award, and do not extend to the question whether the party against whom it is made will be capable of satisfying it: see *The Rena K* [1979] QB 377, [1979] 1 All ER 397, [1978] 1 Lloyd's Rep 545 (decided under the Arbitration Act 1975; see now the Arbitration Act 1996).

7 These words appeared in the Arbitration Act 1975 but were omitted from the Arbitration Act 1996. In *Hayter v Nelson* [1990] 2 Lloyd's Rep 265, it was held that there can be a dispute between the parties even though it was clear from the outset that one party was right and the other was wrong. The Court of Appeal has held that there will be a dispute until the sums claimed are admitted as being due and owing (*Halki Shipping Corp v Sopex Oils Ltd, The Halki* [1998] 2 All ER 23, [1998] 1 WLR 726, [1998] 1 Lloyd's Rep 465, CA) but, in considering a deemed dispute clause, the Court of Appeal has held that a dispute persisted after liability was admitted, as the applicant was entitled to an arbitration award which he could enforce (see *Glencore Grain Ltd v Agros Trading Co Ltd* [1999] 2 All ER (Comm) 288, [1999] 2 Lloyd's Rep 410, CA).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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(2) PARTICULAR SUBJECTS OF JURISDICTION

(i) Possession or Ownership

104. Extent of jurisdiction regarding possession or ownership of a ship.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any claim relating to the possession or ownership of a ship², or to the ownership of any share in a ship³. The jurisdiction extends to all ships whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and to all claims wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land)⁴. This jurisdiction does not extend to aircraft⁵.

The jurisdiction to entertain claims for possession is derived from the inherent jurisdiction of the Admiralty Court to take ships or vessels out of the hands of wrongdoers and restore them to the owners⁶, and to dispossess masters who ought to be removed⁷. Jurisdiction was originally limited to disputes as to possession alone, for the common law courts declared that where any bona fide claim of ownership was set up as a defence, the Admiralty Court had no jurisdiction to deal with the question of title⁸. To remedy this limitation, a statutory jurisdiction was conferred in 1840 upon the Admiralty Court to decide any question of title to the subject matter of claims for possession⁹.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 As to the meaning of 'ship' for these purposes see PARA 85 note 7. As to ownership and control of ships generally see PARA 229 et seq.

3 Supreme Court Act 1981 s 20(1)(a), (2)(a).

4 See the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86. Where possession of a foreign ship is sought, although the English court has jurisdiction to entertain the claim, an application to stay the claim on the ground of forum non conveniens is likely to be successful in the absence of some substantial connection with England: see *The Jupiter (No 2)* [1925] P 69, [1925] All ER Rep 203, 21 Ll L Rep 116, CA. As to the doctrine of forum non conveniens see PARA 100. In addition, the court's discretion to refuse to entertain claims for wages by the master or member of the crew of a ship, not being a British ship, is expressly preserved: see the Supreme Court Act 1981 s 24(2)(a); and PARAS 85, 128. As to questions of sovereign immunity see PARAS 86, 90.

5 *Re Glider Standard Austria SH 1964* [1965] P 463, [1965] 2 All ER 1022, [1965] 2 Lloyd's Rep 189.

6 *Re Blanshard* (1823) 2 B & C 244. As to the development of the law that is administered in Admiralty see PARA 80 et seq.

7 *The New Draper* (1802) 4 Ch Rob 287.

8 *The Warrior* (1818) 2 Dods 288.

9 See the Admiralty Court Act 1840 s 4 (repealed by the Supreme Court of Judicature (Consolidation) Act 1925 s 226(1), Sch 6 and replaced by s 22(1)(a)(i), which was itself repealed by the Administration of Justice Act 1956 s 57(2), Sch 2, and replaced by s 1, itself now replaced by the Supreme Court Act 1981 s 20).

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105. Rectification of register.

In a claim for possession or ownership of a British ship¹, the court has power by virtue of its inherent jurisdiction² to order the rectification of the register where an incorrect entry has been made with regards to the claimant's title³, but the court will not rectify the register as against a bona fide purchaser who has taken without notice of some earlier fraud⁴. The court may in a fit case make an order for the delivery up to the persons entitled to the certificate of registry of a British ship⁵.

1 As to the jurisdiction of the Admiralty Court regarding the possession or ownership of a ship see PARA 104. As to British ships under the Merchant Shipping Act 1995 see PARA 229 et seq.

2 As to the saving of this jurisdiction see PARA 85.

3 *The Rose* (1873) LR 4 A & E 6; see also *Brond v Broomhall* [1906] 1 KB 571. As to registration of ships generally see PARA 245 et seq.

4 *The Horlock* (1877) 2 PD 243, 3 Asp MLC 421.

5 *The St Olaf* (1877) 2 PD 113; *The Celtic King* [1894] P 175.

UPDATE

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Extent of jurisdiction regarding co-ownership.

(ii) Co-ownership

106. Extent of jurisdiction regarding co-ownership.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any question arising between co-owners of a ship² as to possession, employment or earnings of that ship³. The jurisdiction extends to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and to all claims wherever arising⁴.

The jurisdiction in respect of co-owners includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share of the ship, must be sold, and to make such other order as the court thinks fit⁵. In a claim for an account between part-owners, where one of the parties had before the claim parted with all his interest in the ship, the court held that it had jurisdiction to entertain the proceedings and ordered him to give security in respect of the shares he formerly possessed in the ship⁶.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 As to the meaning of 'ship' for these purposes see PARA 85 note 7. As to ownership and control of ships generally see PARA 229 et seq.

3 Supreme Court Act 1981 s 20(1)(a), (2)(b).

4 See the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86.

5 Supreme Court Act 1981 s 20(4). As to the sale and transfer of ships generally see PARAS 34, 236 et seq.

6 *The Lady of the Lake* (1870) LR 3 A & E 29.

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79-228 Admiralty Jurisdiction of the High Court

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107. Sale at instance of minority of co-owners.

The sale of a ship or shares in a ship may, in the discretion of the court, be ordered at the instance of a minority of co-owners without the consent of the majority¹. However, such a minority of co-owners must make out a very strong case to induce the court to make an order for the sale of the whole ship, by which the majority of the co-owners are forced to part with their property whether they like it or not².

1 *The Hereward* [1895] P 284; following *The Nelly Schneider* (1878) 3 PD 152. The jurisdiction extends to all ships whether British or not and whether registered or not: see PARA 106.

2 See *The Marion* (1884) 10 PD 4; and *The Hereward* [1895] P 284.

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79-228 Admiralty Jurisdiction of the High Court

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108. Restraint on dealings with shares.

In the exercise of its jurisdiction over questions of co-ownership¹, the Admiralty Court can restrain the defendant from dealing with the share or shares of a ship registered in England which is the subject of the claim².

The High Court also has a specific statutory power, on the application of any interested person, by order to prohibit for a time specified in the order any dealing with a ship or any share in a ship³, whether the ship is British or not and whether registered or not and wherever the residence or domicile of its owners may be⁴.

1 As to the Admiralty jurisdiction of the High Court of Justice in this respect see PARAS 106-107.

2 *The Horlock* (1877) 2 PD 243, 3 Asp MLC 421.

3 See the Merchant Shipping Act 1995 s 16, Sch 1 para 6; and PARA 306. It was held in *The Mikado* [1992] 1 Lloyd's Rep 163, that the provision which is now contained in the Merchant Shipping Act 1995 Sch 1 para 6 gave the court original jurisdiction to exercise the power conferred and it did not have to be related to some other cause of action. It was also held that 'interested person' is restricted to a person with a proprietary interest in the ship. See also the Supreme Court Act 1981 s 20(1)(a), (2)(a); and PARA 104. As to the power of the court to order a sale where there has been a transmission of a registered ship or share or shares in such a ship to persons not qualified to own a British ship see the Merchant Shipping Act 1995 Sch 1 para 4; and PARA 306.

4 See the Supreme Court Act 1981 s 20(7)(a); and PARA 86.

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Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(2) PARTICULAR SUBJECTS OF JURISDICTION/(iii) Mortgage or Charge/109. Extent of jurisdiction regarding claims in respect of a mortgage or charge on a ship.

(iii) Mortgage or Charge

109. Extent of jurisdiction regarding claims in respect of a mortgage or charge on a ship.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any claim in respect of a mortgage or charge² on a ship³ or any share in a ship⁴. This jurisdiction applies⁵: (1) in relation to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be⁶; (2) in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land)⁷; and (3) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law⁸.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 For these purposes, the word 'charge' refers to a charge in the nature of a mortgage: see *The St Merriel* [1963] P 247, [1963] 1 All ER 537; *The Acrux* [1965] P 391, [1965] 2 All ER 323.

3 As to the meaning of 'ship' for these purposes see PARA 85 note 7. As to mortgages of ships see generally the Merchant Shipping Act 1995 s 16, Sch 1; and PARAS 318-336.

4 Supreme Court Act 1981 s 20(1)(a), (2)(c).

5 It is provided that nothing in the Supreme Court Act 1981 s 20(7) (see heads (1) to (3) in the text) is construed as extending the cases in which money or property is recoverable under any of the provisions of the Merchant Shipping Act 1995: see the Supreme Court Act 1981 s 20(7) proviso; and PARA 86.

6 See the Supreme Court Act 1981 s 20(7)(a); and PARA 86.

7 See the Supreme Court Act 1981 s 20(7)(b); and PARA 86.

8 See the Supreme Court Act 1981 s 20(7)(c); and PARA 86.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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(iv) Damage done by or to a Ship

110. Extent of jurisdiction regarding claims for damage done by or to a ship.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any claim for damage done by a ship² and any claim for damage received by a ship³. The jurisdiction extends to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and to all claims wherever arising⁴.

It is not necessary that there should be actual contact causing damage to establish jurisdiction for damage done by a ship⁵. The jurisdiction has been found to extend to claims for damage caused by a ship's wash⁶, for damage done by part of a ship⁷, for damage done by a ship to a wreck⁸, for expenses of removing a wreck sunk as a result of damage done by another ship⁹, and for loss or damage suffered by a ship in negligent salvage operations¹⁰. Jurisdiction in respect of damage done by a ship also includes claims in respect of statutory liability for damage from oil pollution¹¹. Damage received by a ship includes damage caused by a fixed object, such as a pierhead¹².

Claims for loss of or damage to cargo carried on a ship by the fault of another ship may be the subject of an Admiralty claim against the colliding ship¹³. Although a claim against the carrying ship is now within the jurisdiction of the courts¹⁴, the terms of the contract of carriage will generally exclude liability as between the owner of the cargo and the carrying ship¹⁵.

Subject to a statutory exception in respect of certain occurrences involving the carriage of nuclear matter¹⁶, damage done by a ship gives rise to a maritime lien¹⁷.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87; and see note 17.

2 Supreme Court Act 1981 s 20(1)(a), (2)(e). As to the meaning of 'ship' for these purposes see PARA 85 note 7. A jet ski is not a ship: *Steedman v Schofield* [1992] 2 Lloyd's Rep 163. In the Supreme Court of Judicature (Consolidation) Act 1925 s 22(3) (repealed), the expression 'ship' included any description of vessel used in navigation not propelled by oars. Although it has been held that Admiralty jurisdiction does not include claims arising out of collision between two dumb barges (*Everard v Kendall* (1870) LR 5 CP 428), or two craft solely propelled by oars (*Edwards v Quickenden and Forester* [1939] P 261, 63 Ll L Rep 189, CA), these decisions may now be questioned in the light of the omission of the words 'not propelled by oars' from the Supreme Court Act 1981 s 24(1), and the decision in *Marine Craft Constructors Ltd v Erland Blomqvist (Engineers) Ltd* [1953] 1 Lloyd's Rep 514, where the court emphasised the importance of the purpose for which the craft was being used. The court has jurisdiction in the case of a collision between a dumb barge and a ship: *The Champion* [1934] P 1, 18 Asp MLC 453, 47 Ll L Rep 40. See also *The Queen of the South* [1968] P 449, [1968] 1 All ER 1163, [1968] 1 Lloyd's Rep 182, where motor boats servicing a ship were themselves considered ships.

3 Supreme Court Act 1981 s 20(1)(a), (2)(d).

4 See the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86. As to the statutory right afforded to shipowners and other persons to limit their liability in connection with a ship or other property see PARA 194 et seq.

5 *The Industrie* (1871) LR 3 A & E 303, 1 Asp MLC 17 (vessel grounding to avoid collision with another vessel); see also *The Miraflores and The Abadesa* [1967] 1 AC 826, [1967] 1 All ER 672, [1967] 1 Lloyd's Rep 191, HL.

6 *The Batavier* (1854) 9 Moo PC 286; *Luxford v Large* (1832) 5 C & P 421; cf *The Royal Eagle* (1950) 84 LI L Rep 543; and *The Royal Sovereign* (1950) 84 LI L Rep 549.

7 *The Minerva* [1933] P 224, 18 Asp MLC 426, 46 LI L Rep 212 (a falling derrick).

8 *The Zelo* [1922] P 9.

9 *The Ella* [1915] P 111; *The Chr Knudsen* [1932] P 153, 18 Asp MLC 347, 43 LI L Rep 423.

10 *The Jade, The Eschersheim* [1976] 1 All ER 920, [1976] 1 WLR 430, HL.

11 See the Merchant Shipping Act 1995 s 166; and PARA 88. As to oil pollution generally see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 348 et seq.

12 *The Zeta* [1893] AC 468, 7 Asp MLC 369, HL; *The Hoegh Silvercrest* [1962] 1 Lloyd's Rep 9.

13 See the text and notes 1-2.

14 It was held in *The Victoria* (1887) 12 PD 105, 6 Asp MLC 120, that under the Admiralty Court Act 1861 s 12 (repealed), the words 'damage done by a ship' did not extend the jurisdiction of the court to include a claim by owners of cargo against the carrying ship, but this question is academic in the light of the fact that jurisdiction in respect of claims for damage to cargo carried in a ship is now expressly given by the Supreme Court Act 1981 s 20(1)(a), (2)(g) (as to which see PARA 111).

15 As to exceptions from liability in contracts for carriage of goods by sea see **CARRIAGE AND CARRIERS**.

16 See the Nuclear Installations Act 1965 s 14 (cited in PARA 195; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1504) (any claim in respect of an occurrence which constitutes a breach of a person's duty under the Nuclear Installations Act 1965 does not give rise to any lien or other right in respect of any ship or aircraft).

17 *The Ripon City* [1897] P 226, 8 Asp MLC 304; *The Bold Buccleugh* (1852) 7 Moo PCC 267; *The Veritas* [1901] P 304 at 311, 9 Asp MLC 237 at 241; and see *The Tolten* [1946] P 135, [1946] 2 All ER 372, CA. It is questionable whether damage by oil pollution gives rise to a maritime lien: see generally **LIEN**. As to maritime liens generally, and priorities in relation to such liens see PARA 1037 et seq.

Subject to the Hovercraft Act 1968 s 2(3), the law relating to maritime liens applies in relation to hovercraft and property connected with hovercraft as it applies in relation to ships and property connected with ships, and applies notwithstanding that the hovercraft is on land at any relevant time: see s 2(2); and PARA 383.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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(v) Claims relating to Cargo or to Contracts of Carriage or Hire

111. Extent of jurisdiction regarding claims relating to cargo and carriage.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine: (1) any claim for loss of or damage to goods² carried in a ship³; and (2) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship⁴. The jurisdiction extends to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and to all claims wherever arising⁵.

Under head (2) above, the words 'arising out of' should be given the wider meaning of 'connected with' and not the narrower meaning of 'arising under'⁶; and the words 'agreement relating to use or hire of a ship' are not to be given a restricted meaning⁷. The jurisdiction is wide enough to cover claims in tort arising out of any agreement relating to the carriage of goods in a ship⁸. An agreement relating to the use or hire of a ship includes a contract for services rendered by motor boats to a ship where those services involve more than some incidental and minor use of those boats⁹. The words 'use or hire of a ship' are also wide enough to cover the case of the hire of a tug under a towage contract¹⁰. A claim will only fall within the jurisdiction under head (2) above if the claim arises out of an agreement relating to carriage in a particular vessel, and it does not cover claims relating to carriage in unidentified vessels¹¹.

Claims in respect of damage to cargo do not, unless they result from damage done by a ship, give rise to a maritime lien¹².

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 For the purposes of the Supreme Court Act 1981 ss 20-23, unless the context otherwise requires, 'goods' includes baggage: s 24(1).

3 Supreme Court Act 1981 s 20(1)(a), (2)(g). As to the meaning of 'ship' for these purposes see PARA 85 note 7. Jurisdiction under this heading includes examples of claims based on contract as well as on tort arising out of an agreement relating to the carriage of goods in a ship: see *The Fehmarn* [1958] 1 All ER 333, [1958] 1 WLR 159, [1957] 2 Lloyd's Rep 551, CA; *The St Elefterio* [1957] P 179, [1957] 2 All ER 374, [1957] 1 Lloyd's Rep 283; *The Moscanthy* [1971] 1 Lloyd's Rep 37. As to division of loss where two or more vessels are at fault see PARA 800 et seq.

4 Supreme Court Act 1981 s 20(1)(a), (2)(h). The extent of jurisdiction under this heading is the same as that under s 20(1)(a), (2)(g) (see head (1) in the text). See also *Petrofina SA v AOT Ltd, The Maersk Nimrod* [1992] QB 571, [1991] 3 All ER 161, [1991] 1 Lloyd's Rep 269. See further *The Bumbest* [2000] QB 559, [2000] 2 All ER 692, [1999] 2 Lloyd's Rep 481 (claim arising out of arbitration clause in charterparty not claim arising out of agreement relating to the use or hire of a ship).

5 See the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86. As to the statutory right afforded to shipowners and other persons to limit their liability in connection with a ship or other property see PARA 194 et seq.

6 See *The Antonis P Lemos* [1985] AC 711, [1985] 1 All ER 695, [1985] 1 Lloyd's Rep 283, HL. Claims for indemnity and contribution under the Civil Liability (Contribution) Act 1978 (as to which see **DAMAGES** vol 12(1) (Reissue) PARA 842 et seq; and **TORT** vol 45(2) (Reissue) PARA 349 et seq) were held to be claims arising out of an agreement for carriage of containers and their contents: *The Hamburg Star* [1994] 1 Lloyd's Rep 399. The words

'arising out of' are not wide enough to include a claim to enforce an arbitration award, even though the arbitration provision is in a charter party: *The Bumbest* [2000] QB 559, [2000] 2 All ER 692, [1999] 2 Lloyd's Rep 481.

7 *The Jade, The Eschersheim* [1976] 1 All ER 920, [1976] 1 WLR 430, HL (salvage agreement). A management agreement, which provided that the managers would be solely entitled to enter into charter parties for the owners of the ship they were to manage, was an agreement relating to the use or hire of that ship: *The Stella Nora* [1981] Com LR 200.

8 *The St Elefterio* [1957] P 179, [1957] 2 All ER 374, [1957] 1 Lloyd's Rep 283; approved in *The Antonis P Lemos* [1985] AC 711, [1985] 1 All ER 695, HL. Although there is no need for a contractual nexus between the parties, there must be a reasonably direct connection with the carriage of goods in a ship: *Gatol International Inc v Arkwright-Boston Manufacturers Mutual Insurance Co* [1985] AC 255, [1985] 1 All ER 129, HL. See also *Bain Clarkson Ltd v The Owners of the Ship, The Sea Friend* [1991] 2 Lloyd's Rep 322.

9 *The Queen of the South* [1968] P 449, [1968] 1 All ER 1163, [1968] 1 Lloyd's Rep 182. As to what may or may not constitute a 'ship' see PARA 110 note 2.

10 See *The Conoco Britannia* [1972] 2 QB 543, [1972] 2 All ER 238, [1972] 1 Lloyd's Rep 342.

11 *The Lloyd Pacifico* [1995] 1 Lloyd's Rep 54.

12 See *The Pieve Superiore* (1874) LR 5 PC 482, 2 Asp MLC 319. Claims against the non-carrying vessel for damage to cargo resulting from collision which give rise to a maritime lien are within the jurisdiction conferred by the Supreme Court Act 1981 s 20(1)(a), (2)(e): see PARA 110. As to the nature of maritime liens generally see PARA 1037 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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(vi) Loss of Life or Personal Injury

112. Extent of jurisdiction regarding claims for loss of life or personal injury.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any claim for loss of life² or personal injury³ sustained in consequence of:

- 268 (1) any defect in a ship⁴ or in its apparel or equipment⁵; or
- 269 (2) in consequence of the wrongful act, neglect or default of⁶:
- 7
- 8. (a) the owners, charterers or persons in possession or control of a ship⁷; or
- 9. (b) the master⁸ or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible⁹.
- 8

Jurisdiction under either head (1) or head (2) above requires an act, neglect or default: (i) in the navigation or management of the ship¹⁰; (ii) in the loading, carriage or discharge of goods¹¹ on, in or from the ship¹²; or (iii) in the embarkation, carriage or disembarkation of persons on, in or from the ship¹³.

The jurisdiction extends to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and to all claims wherever arising¹⁴.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 I.e. a claim under the Fatal Accidents Act 1976: see **NEGLIGENCE** vol 78 (2010) PARA 24 et seq. It has been held that Admiralty jurisdiction does not extend to a claim for an indemnity in respect of statutory compensation paid for loss of life: *The Molière* [1925] P 27, 16 Asp MLC 470, distinguishing *The Annie* [1909] P 176, 11 Asp MLC 213.

3 As to negligence causing loss, including the joint and several liability of shipowners if two or more vessels are at fault, and as to the right of contribution, see PARA 785 et seq.

4 As to the meaning of 'ship' for these purposes see PARA 85 note 7.

5 Supreme Court Act 1981 s 20(1)(a), (2)(f). The court, on the application of any party to an action to be tried in the Queen's Bench Division, has a discretion to order that the damages be assessed by a jury (see the Supreme Court Act 1981 s 69; and **DAMAGES** vol 12(1) (Reissue) PARA 1155) and provision is made for trial by jury if there is in issue any question or issue of a kind prescribed for these purposes (see *The Kwasind* (1915) 84 LJP 102, CA). However, by the rules of court, save where on a case management conference an order is made for trial with a jury on the ground that there are special reasons, trial is by a judge without a jury, and in practice such assessment is nearly always carried out by the Admiralty Registrar: see PARA 143.

6 Supreme Court Act 1981 s 20(1)(a), (2)(f). The phrase 'wrongful act, neglect or default' derives from the Fatal Accidents Act 1846 s 1 (repealed) (see now the Fatal Accidents Act 1976 s 1; and **NEGLIGENCE** vol 78 (2010) PARA 25) and covers the breach of a term against negligence in a contract: see *Grein v Imperial Airways Ltd* [1937] 1 KB 50, [1936] 2 All ER 1258, CA; *Quinn v Burch Bros (Builders) Ltd* [1966] 2 QB 370, [1965] 3 All ER 801.

- 7 Supreme Court Act 1981 s 20(1)(a), (2)(f)(i).
- 8 As to the meaning of 'master' for these purposes see PARA 85 note 14.
- 9 Supreme Court Act 1981 s 20(1)(a), (2)(f)(ii).
- 10 See the Supreme Court Act 1981 s 20(1)(a), (2)(f).
- 11 As to the meaning of 'goods' for these purposes see PARA 111 note 2.
- 12 See the Supreme Court Act 1981 s 20(1)(a), (2)(f).
- 13 See the Supreme Court Act 1981 s 20(1)(a), (2)(f).
- 14 See the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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(vii) Salvage

A. IN GENERAL

113. Extent of jurisdiction regarding salvage claims.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any claim:

- 270 (1) under the Salvage Convention 1989²;
- 271 (2) under any contract for or in relation to salvage services³; or
- 272 (3) in the nature of salvage not falling within head (1) or head (2) above⁴,

or any corresponding claim in connection with an aircraft⁵. The jurisdiction extends to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and to all claims wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land)⁶.

The High Court originally acquired jurisdiction in respect of claims for salvage of property from the inherent jurisdiction of the Admiralty Court⁷. The jurisdiction to award salvage for services in the preservation of life is, except where some property is also salvaged, entirely statutory⁸.

Salvage, whether of property or of life, confers a maritime lien on the property salvaged⁹, but not all claims under this head of jurisdiction will give rise to a maritime lien¹⁰.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 Supreme Court Act 1981 s 20(1)(a), (2)(j)(i) (s 20(2)(j) substituted by the Merchant Shipping (Salvage and Pollution) Act 1994 s 1(6), Sch 2 para 6(2)). For these purposes, the 'Salvage Convention 1989' means the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) (as to which see PARA 8) as it has effect under the Merchant Shipping Act 1995 s 224 (as to which see PARAS 878, 891 et seq): Supreme Court Act 1981 s 20(6)(a) (s 20(6) substituted by the Merchant Shipping (Salvage and Pollution) Act 1994 Sch 2 para 6(3); Supreme Court Act 1981 s 20(6)(a) amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 59(2) (c)).

3 Supreme Court Act 1981 s 20(1)(a), (2)(j)(ii) (as substituted: see note 2). For these purposes, the reference to salvage services includes services rendered in saving life from a ship, and the reference to any claim under any contract for or in relation to salvage services includes any claim arising out of such a contract whether or not arising during the provision of the services: s 20(6)(b) (as substituted: see note 2). As to the meaning of 'ship' for these purposes see PARA 85 note 7. As to salvage generally see PARA 876 et seq.

4 Supreme Court Act 1981 s 20(1)(a), (2)(j)(iii) (as substituted: see note 2).

5 Supreme Court Act 1981 s 20(1)(a), (2)(j) (as substituted: see note 2). The reference to a corresponding claim in connection with an aircraft is a reference to any claim corresponding to any claim in head (1) or in head (2) in the text which is available under the Civil Aviation Act 1982 s 87 (application of law of wreck and salvage to aircraft) (see **AIR LAW** vol 2 (2008) PARA 599): Supreme Court Act 1981 s 20(6)(c) (as substituted: see note 2). As to salvage in respect of aircraft see PARA 114.

6 See the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86.

7 As to the development of the law that is administered in Admiralty see PARA 80 et seq.

8 See PARAS 120-121.

9 *The Veritas* [1901] P 304 at 311-312, 9 Asp MLC 237 at 241 per Gorell Barnes J.

10 See, for example, claims for special compensation under the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 14 (cited in PARA 905) or under the terms of the 'Scopic Clause' (if invoked) (cited in PARAS 983, 986).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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114. Salvage in respect of aircraft.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any claim under the Salvage Convention 1989² or under any contract for or in relation to salvage services³. Any services rendered in assisting, or in saving life⁴ from, or in saving the cargo or apparel of, an aircraft in, on or over the sea or any tidal water, or on or over the shores of the sea or any tidal water, are to be deemed to be salvage services in all cases in which they would have been salvage services if they had been rendered in relation to a vessel⁵.

Where salvage services are rendered by an aircraft to any property or person, the owner of the aircraft is entitled to the same reward for those services as he would have been entitled to if the aircraft had been a vessel⁶.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 I.e. the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) (as to which see PARA 8) as it has effect under the Merchant Shipping Act 1995 s 224 (as to which see PARAS 878, 891 et seq): see the Supreme Court Act 1981 s 20(1)(j)(i), (6)(a); and PARA 113.

3 See the Supreme Court Act 1981 s 20(1)(a), (2)(j)(ii); and PARA 113. The salvage services are those which are available under the Civil Aviation Act 1982 s 87 (see **AIR LAW** vol 2 (2008) PARA 599): see the Supreme Court Act 1981 s 20(6)(b), (c); and PARA 113. Under the Civil Aviation Act 1982 s 87, Her Majesty may by Order in Council direct that any provisions of any Act for the time being in force which relate to wreck, to salvage of life or property or to the duty of rendering assistance to vessels in distress, with such modifications, if any, as may be specified in the Order, are to apply in relation to aircraft as they apply in relation to vessels: s 87(4). For these purposes, any provisions of an Act which relate to vessels laid by or neglected as unfit for sea service are deemed to be provisions relating to wreck (s 87(5)(a)); and 'Act' includes any local or special Act and any provisions of the Harbours, Docks and Piers Clauses Act 1847, as incorporated with any local or special Act (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 602 et seq), whenever passed (Civil Aviation Act 1982 s 87(5)(b)). See also the Aircraft (Wreck and Salvage) Order 1938, SR & O 1938/136 (amended by SI 1964/489), which has effect as if made under the Civil Aviation Act 1982 s 87 by virtue of s 105(3), and see **AIR LAW** vol 2 (2008) PARA 599. As to salvage and wreck see further PARAS 122 et seq, 876 et seq.

4 As to life salvage see PARAS 120-121.

5 Civil Aviation Act 1982 s 87(1). The provisions of s 87(1), (2) have effect notwithstanding that the aircraft concerned is a foreign aircraft and notwithstanding that the services in question are rendered elsewhere than within the limits of the territorial waters adjacent to any part of Her Majesty's dominions: s 87(3). As to the extent of the jurisdiction see the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86. For an example of services to an aircraft see *Watson v RCA Victor Co Inc* (1934) 50 Ll L Rep 77, where, however, jurisdiction under the Air Navigation Act 1920 s 11 (repealed) was restricted to aircraft wrecked within Her Majesty's jurisdiction.

6 Civil Aviation Act 1982 s 87(2). As to the effect of this provision see note 5. For an example of a salvage award for services by an aircraft and her crew see *The American Farmer* (1947) 80 Ll L Rep 672.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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B. SALVAGE OF PROPERTY

115. Services for which remuneration is payable.

The High Court¹ has jurisdiction to award salvage remuneration for services rendered to a ship, its cargo or apparel or any other property belonging to it². Salvage remuneration may not, however, be recovered for services rendered to a raft of timber which has not formed part of the cargo of a ship³, or to a structure afloat on the water, provided for storing gas to be used for lighting a tidal river⁴. There is no jurisdiction to award salvage in respect of services rendered to a vessel in non-tidal waters⁵. The court has power to award interest on a salvage award⁶.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq; and as to the Admiralty jurisdiction in relation to salvage etc see PARAS 113-114. As to the common law principles which apply to salvage services see PARA 924 et seq.

2 *Wells v Gas Float Whitton No 2 (Owners)* [1897] AC 337, 8 Asp MLC 272, HL. As to the position regarding aircraft see PARA 114.

3 *The Raft of Timber* (1844) 2 Wm Rob 251.

4 *Wells v Gas Float Whitton No 2 (Owners)* [1897] AC 337, 8 Asp MLC 272, HL. Whether, however, this decision would be applicable to cases where, no owner appearing within a year and a day, similar structures to that in *Wells v Gas Float Whitton No 2 (Owners)* would be the subject of condemnation as droits of Admiralty to the Crown (as to which see PARA 139), may be doubted. Probably in such cases the persons who rendered the salvage services would be held entitled to be rewarded on salvage principles out of the proceeds of the structures salvaged, as it is questionable that the Crown would be entitled to the droit of Admiralty without any payment to the finders at all. On this point see *Stackpoole v R* (1875) IR 9 Eq 619, CA, where it was held that logs of timber found floating in the sea were droits of Admiralty and not wreck. See also Williams and Bruce's *Admiralty Practice* (3rd Edn) 127n, where many instances of property, other than the property which the House of Lords has declared to be the subject of salvage, are referred to as being salvaged and condemned as droits of Admiralty after salvage had been paid to the salvors. See also RG Marsden 'Admiralty Droits and Salvage' 15 LQR 353-366.

5 *The Goring* [1988] AC 831, [1988] 1 All ER 641, HL; *The Powstaniec Wielkopolski* [1989] QB 279, [1989] 1 All ER 198, [1989] 1 Lloyd's Rep 58.

6 *The Aldora* [1975] QB 748, [1975] 2 All ER 69.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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116. Persons liable to pay salvage remuneration.

In the absence of agreement to the contrary, the respective owners of different property salvaged will each be individually liable to the salvor for the amount payable in respect of the salvage to his property and usually the award against each interest will be in proportion to salvaged values¹. (This is the position also where the International Convention on Salvage 1989 applies)².

Bailees of the property salvaged, who would have been liable to the owners if the property had been lost, have been held liable in an action in personam to pay the salvor's remuneration³. Freight earned or in the course of being earned on the voyage during which the services are rendered will generally be at the risk of shipowner or cargo owner and will contribute to the salvage remuneration as part of the ship or cargo value, as the case may be⁴. It is uncertain whether a claim for salvage lies in respect of voyage freight at the risk of a time charterer, but it seems doubtful⁵. It is generally accepted, but there is no authority on the point, that bunkers owned by time charterers constitute a separate contributory salvaged interest.

1 *The Mary Pleasants* (1857) Sw 224. The award will be assessed as at the date of termination of the salvage services: *The George Dean* (1857) Sw 290; *The Sunheath* (1925) 22 Ll L Rep 361 at 363 per Bateson J. As to the Admiralty jurisdiction of the High Court in relation to salvage etc see PARAS 113-114.

2 See the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13(2); and PARA 904. As to the liability to contribute to salvage remuneration see also PARAS 903, 905 et seq. It is submitted that previous decisions which departed from this general rule, eg where different risks, as distinct from different degrees of risk, were perceived to be involved, are no longer good law: see eg *The Longford* (1881) 6 PD 60; *The Vesta* (1828) 2 Hag Adm 189; and *The Velox* [1906] P 263. See also *The Lista* (1946) 79 Ll L Rep 401.

3 *The Port Victor (cargo ex)* [1901] P 243, CA; *The Five Steel Barges* (1890) 15 PD 142, 6 Asp MLC 580. As to claims in personam see PARA 83 et seq.

4 As to the assessment of the value of freight where the services terminate at an intermediate port see *The Norma* (1860) Lush 124; and *The George Dean* (1857) Sw 290.

5 *Norsk Bjergningskompagni A/S v Owners of the Pantanassa* [1970] P 187, [1970] 1 All ER 848, [1970] 1 Lloyd's Rep 153. As to liability for salvage and the principles upon which the amount of remuneration is determined see also PARA 876 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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117. Damage caused by salvor.

If by negligence the salvor causes the loss of the property which is the subject of the salvage operation, he will be liable in damages¹. If in performing the services he negligently causes damage to the salvaged property, he will be liable in damages even though he has done more good than harm². In assessing the damages, in such circumstances, there must be a deduction of the hypothetical salvage remuneration which would have been awarded but for negligence³. The court takes a lenient view of the conduct of salvors and is slow to find them guilty of negligence, as the policy of the law is to encourage the rendering of salvage services, but it will still make such a finding in a proper case⁴.

1 See *The Alenquer* [1955] 1 WLR 263; *The Thetis* (1869) LR 2 A & E 365; *The C S Butler* (1874) LR 4 A & E 178. As to the Admiralty jurisdiction of the High Court in relation to salvage etc see PARAS 113-114. As to the degree of care and skill required in salvors see PARA 951; and as to the consequences of negligence found in salvors see PARA 953.

2 *The Tojo Maru* [1972] AC 242, [1971] 1 All ER 1110, [1971] 1 Lloyd's Rep 341, HL. As to the duties of the salvor and of the owner and master see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 8 (cited in PARA 899).

3 *The Tojo Maru* [1972] AC 242, [1971] 1 All ER 1110, [1971] 1 Lloyd's Rep 341, HL.

4 *The St Blane* [1974] 1 Lloyd's Rep 557.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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118. Application of salvage law to the Crown.

Subject to certain exceptions¹, the law relating to civil salvage, whether of life or property², applies in relation to salvage services in assisting any of Her Majesty's ships³, or in saving life from any such ship, or in saving any cargo or equipment belonging to Her Majesty in right of her government in the United Kingdom⁴, in the same manner as if the ship, cargo or equipment belonged to a private person⁵.

Where salvage services are rendered by or on behalf of Her Majesty, whether in right of her government in the United Kingdom or otherwise, Her Majesty is entitled to claim salvage in respect of those services to the same extent as any other salvor, and has the same rights and remedies in respect of those services as any other salvor⁶. Where a ship is requisitioned by the Crown and the terms of requisition do not amount to a demise or sub-demise, it would appear that a claim for salvage should be made by the owners of the ship and not by the Crown⁷.

Civil proceedings by the Crown may be instituted either by an authorised government department in its own name, whether that department was or was not⁸ authorised to sue, or by the Attorney General⁹. No claim for salvage services by the commander or crew or part of the crew of any of Her Majesty's ships¹⁰ will be finally adjudicated upon without the consent of the Secretary of State¹¹ to the prosecution of the claim¹². Any document purporting to give the consent of the Secretary of State for these purposes¹³ and to be signed by an officer of the Ministry of Defence is evidence of that consent¹⁴. If the claim is prosecuted without the required consent¹⁵ the claim must be dismissed with costs¹⁶.

1 Ie subject to the Crown Proceedings Act 1947 s 29 (exclusion of proceedings in rem against the Crown) (see **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 103; and PARA 179) so far as it is consistent with the Salvage Convention (as to which see PARA 8): see the Merchant Shipping Act 1995 s 230(1); and PARA 890.

2 Ie except for the Merchant Shipping Act 1995 ss 225-227 (relating to the power of receivers of wreck to value property and to detain and sell property) (as to which see PARAS 884-886): see s 230(1); and PARA 890.

3 For these purposes, 'Her Majesty's ships' has the same meaning as in the Merchant Shipping Act 1995 s 192 (application of shipowners liability to Crown) (see PARA 1065): see s 230(7). As to the meaning of 'ship' for these purposes see PARA 229.

4 As to the meaning of 'United Kingdom' see PARA 17 note 3.

5 See the Merchant Shipping Act 1995 s 230(1); and PARA 890.

6 See the Merchant Shipping Act 1995 s 230(2); and PARA 890.

7 See the definition of 'Her Majesty's ships' in the Merchant Shipping Act 1995 ss 192(2), 230(7) (cited in note 3); and see *The Sarpen* [1916] P 306, CA.

8 Ie whether or not authorised to sue at the commencement of the Crown Proceedings Act 1947 (ie 1 January 1949): see s 17(2); and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 119.

9 See the Crown Proceedings Act 1947 s 17(2); and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 119.

10 For a claim in respect of salvage services by one of Her Majesty's aircraft see *The American Farmer* (1947) 80 Ll L Rep 672.

11 As to the Secretary of State see PARA 38.

12 See the Merchant Shipping Act 1995 s 230(3); and PARA 890. In the case of claims by the commander and crew of one of Her Majesty's ships, no allowance is made for the value of the salving ship (*The Carrie* [1917] P 224; *The Domira* (1913) 29 TLR 557; affd (1914) 30 TLR 521, CA), but the court will take into consideration the responsibility incurred by the officer who takes it upon himself to risk government property (*The Gorliz* (1917) as reported in 119 LT 123; *The Domira* (1914) 30 TLR 521, CA). The mere protection of merchant shipping from hostile attack does not entitle the commander and crew of one of Her Majesty's ships to a salvage award, since such a service is only part of their ordinary duties: *The F D Lambert* [1917] P 232n. Where the risk incurred is no greater than that involved in the performance of their ordinary duties they will not be entitled to a large award: *The Gorliz*. As to the right to salvage arising on the recapture of a neutral ship in the hands of the enemy see *The Svanfos*, *The Borgila* [1919] P 189.

13 Ie for the purposes of the Merchant Shipping Act 1995 s 230(3) (as to which see the text and notes 10-12): see s 230(4).

14 See the Merchant Shipping Act 1995 s 230(4); and PARA 890.

15 Ie the consent required for the purposes of the Merchant Shipping Act 1995 s 230(3) (as to which see the text and notes 10-12): see s 230(5).

16 See the Merchant Shipping Act 1995 s 230(5); and PARA 890.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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119. Apportionment of salvage remuneration.

A power to apportion amongst the salvors the amount of salvage remuneration was and is incident to the jurisdiction of the Admiralty Court in claims for salvage¹. Where the aggregate amount of salvage payable in respect of salvage services rendered in United Kingdom waters² has been finally determined and exceeds the statutory threshold³, or where the aggregate amount of salvage payable in respect of salvage services rendered outside United Kingdom waters (of whatever amount) has been finally determined, but where, in either case, any delay or dispute arises as to the apportionment of the amount, the court⁴ may cause the amount of salvage to be apportioned among the persons entitled to it in such manner as it thinks just⁵. For the purpose of making that apportionment, the court may:

- 273 (1) appoint any person to carry that apportionment into effect⁶;
- 274 (2) compel any person in whose hands or under whose control the amount may be to distribute it or to pay it into court to be dealt with as the court directs⁷; and
- 275 (3) issue such process as it thinks fit⁸.

In the case of salvage services rendered by the owners, master and crew of a foreign ship, the apportionment must be in accordance with the law of the flag of that vessel⁹.

1 The power is derived from the Merchant Shipping Act 1995 s 229(1)-(3): see the text and notes 2-8. Any decision of the court under s 229 must be made on the basis of the criteria contained in the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13 (as to which see PARA 904): see the Merchant Shipping Act 1995 s 229(2); and PARA 888. As to the Admiralty jurisdiction of the High Court in relation to salvage etc see PARAS 113-114.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3; and as to the meaning of 'United Kingdom waters' see PARA 48 note 10.

3 It exceeds £5,000: see the Merchant Shipping Act 1995 s 229(1). Where the aggregate amount of salvage payable in respect of salvage services rendered in United Kingdom waters has been finally determined and does not exceed £5,000, but a dispute arises as to the apportionment of the amount among several claimants, the person liable to pay the amount may apply to the receiver for leave to pay it to him: see the Merchant Shipping Act 1995 s 228; and PARA 887.

4 For these purposes, 'court' means the High Court: see the Merchant Shipping Act 1995 s 229(4).

5 See the Merchant Shipping Act 1995 s 229(1); and PARA 888. As to the principles of apportionment see *The Enchantress* (1860) Lush 93; and PARAS 961-962.

6 See the Merchant Shipping Act 1995 s 229(3)(a); and PARA 888.

7 See the Merchant Shipping Act 1995 s 229(3)(b); and PARA 888.

8 See the Merchant Shipping Act 1995 s 229(3)(c); and PARA 888.

9 See the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 15(2); and PARA 906. This does not extend to wreck found outside United Kingdom territorial waters: *Pierce v Bemis, The Lusitania* [1986] QB 384, [1986] 1 All ER 1011, [1986] 1 Lloyd's Rep 132.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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C. LIFE SALVAGE

120. Nature of life salvage.

Where no property ('res') had been saved and life alone had been preserved from destruction, no suit for a salvage reward could be maintained in the Admiralty Court, one reason being that there could be no proceedings in rem, which was the ancient foundation of the salvage suit¹. Where, however, both life and property had been saved by one set of salvors, it was and still is the practice to give an enhanced award, the enhancement being a reflection of the value of the services rendered in the saving of life². Statutory provisions were introduced³ to protect persons who could not be justly compensated because they had saved life only, or very little property⁴, but there is still no right of action⁵ where no res is saved⁶. Moreover in certain circumstances a salvor may obtain a true life salvage award under the statutory provisions⁷ where, even though he himself has rendered no salvage services to ship and cargo⁸, some property is preserved⁹.

1 *The Fusilier* (1865) Brown & Lush 341 at 344 per Dr Lushington; and see *The Aid* (1822) 1 Hag Adm 83. As to the development of the law that is administered in Admiralty see PARA 80 et seq. As to the common law principles which apply to life salvage see also PARA 927.

2 See *The Johannes* (1860) 1 Lush 182; *The Fusilier* (1865) Brown & Lush 341; *The Willem III* (1871) LR 3 A & E 487, 1 Asp MLC 129; *The Bosworth (No 2)* [1960] 1 All ER 729, [1961] 1 WLR 319, [1960] 1 Lloyd's Rep 173, CA; *The Bosworth (No 3)* [1962] 1 Lloyd's Rep 483. In contrast with the jurisdiction under the Merchant Shipping Act 1995 s 224 (ie the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526)) (as to which see PARAS 878, 891 et seq), the inherent jurisdiction applies to claims wherever they arise, even in relation to foreign ships: see the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86.

3 See the Merchant Shipping Act 1854 (repealed and re-enacted in the Merchant Shipping Act 1995 s 224, which gives force of law to the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 16); and PARA 121.

4 *The Fusilier* (1865) Brown & Lush 341 at 344 per Dr Lushington.

5 See the Merchant Shipping Act 1995 s 224; and the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) (cited in PARA 121).

6 *The Renpor* (1883) 8 PD 115, 5 Asp MLC 98, CA.

7 See PARA 121.

8 *The Bosworth (No 3)* [1962] 1 Lloyd's Rep 483.

9 *Nourse v Liverpool Sailing Ship Owners Mutual Protection and Indemnity Association* [1896] 2 QB 16, CA; *The Bosworth (No 2)* [1960] 1 All ER 729, [1961] 1 WLR 319, [1960] 1 Lloyd's Rep 173, CA. See also *The Schiller (cargo ex)* (1877) 2 PD 145, CA, where the property saved was recovered by divers long after the life services were rendered.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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121. Statutory jurisdiction with respect to life salvage.

A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for saving the vessel or other property or preventing or minimising damage to the environment¹. Where services are rendered wholly or in part in United Kingdom waters² in saving life from a vessel of any nationality or elsewhere in saving life from any United Kingdom ship and either the vessel and other property are destroyed³, or the sum to which the salvor is entitled⁴ is less than a reasonable amount for the services rendered in saving life, the Secretary of State⁵ may, if he thinks fit, pay to the salvor such sum or, as the case may be, such additional sum as he thinks fit in respect of the services rendered in saving life⁶.

1 See the Merchant Shipping Act 1995 s 224; and the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 16(2). No remuneration is due from persons whose lives are saved, but art 16 does not affect the provisions of national law on this subject: art 16(1). As to the Merchant Shipping Act 1995 s 224 and the International Convention on Salvage 1989 generally see PARAS 878, 891 et seq.

2 As to the meaning of 'United Kingdom waters' under the Merchant Shipping Act 1995 see PARA 48 note 10. The previous legislation (ie the Merchant Shipping Act 1894 s 544 (repealed)) referred to 'British waters', meaning waters within the territorial limits of the United Kingdom, ie in ordinary cases waters within three miles of the coast: see *The Johannes* (1860) 1 Lush 182; *The Leda* (1856) Sw 40 at 43. In respect of a foreign vessel the question whether the services were rendered in British waters or not is one of fact: see *The Willem III* (1871) LR 3 A & E 487, 1 Asp MLC 129; *The Cairo* (1874) LR 4 A & E 184; *The Pacific* [1898] P 170, 8 Asp MLC 422; *The Fulham* [1898] P 206 at 213, 8 Asp MLC 425 at 426-427 (on appeal [1899] P 251, 8 Asp MLC 559, CA); *Jorgensen v Neptune Steam Fishing Co Ltd* 1902 4 F 992, Ct of Sess. For the position with regard to aircraft see PARA 114. In case of doubt, a declaration may be obtained from a responsible minister of the Crown and such declaration is conclusive: *The Fagernes* [1927] P 311, CA; *Sayce v Ameer Ruler Sadig Mohammad Abbasi Bahawalpur State* [1952] 2 QB 390, [1952] 2 All ER 64, CA. See also the Territorial Waters Order in Council 1964, dated 25 September 1964; and *Post Office v Estuary Radio Ltd* [1968] 2 QB 740 at 752-753, [1967] 3 All ER 663 at 679, CA, per Diplock LJ.

3 It would appear that this covers the case where no property is preserved, as well as where it is subsequently destroyed: see *The Fusilier* (1865) Brown & Lush 341 at 344 per Dr Lushington.

4 Ie under the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 16(2) (see the text and note 1): see the Merchant Shipping Act 1995 s 224, Sch 11 Pt II para 5.

5 As to the Secretary of State see PARA 38.

6 See the Merchant Shipping Act 1995 Sch 11 Pt II para 5; and PARA 923.

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79-228 Admiralty Jurisdiction of the High Court

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D. SALVAGE OF WRECK AND DERELICT

122. Nature of wreck and derelict.

The Admiralty jurisdiction of the High Court in claims for salvage¹ includes jurisdiction in respect of claims for services rendered in preserving cargo, apparel or wreck², including, in the cases of cargo or wreck salvage, claims in respect of cargo or wreck found on land³. Furthermore, as part of its inherent jurisdiction, the Admiralty Court recognises as a class of salvage service work done in saving derelict or its contents, and this jurisdiction is not restricted by the locality of the services⁴.

The Crown is entitled to all unclaimed wreck found in the United Kingdom⁵ or in United Kingdom waters⁶, except where the right has been granted to some other person⁷. Wreck includes flotsam, jetsam, lagan and derelict⁸ found in or on the shores of the sea or any tidal water⁹. All things found derelict on the sea, including flotsam, jetsam or lagan which have not touched the ground¹⁰ and which are brought within the United Kingdom¹¹, are prima facie droits of Admiralty but do not become actual droits unless there is no claim to ownership, and until then they are only derelict¹².

1 See the Supreme Court Act 1981 s 20(1)(a), (2)(j); and PARAS 93, 113.

2 See PARAS 123-124.

3 See the Supreme Court Act 1981 s 20(7)(b); and PARA 86.

4 *R (in his Office of Admiralty) v Property Derelict* (1825) 1 Hag Adm 383; *HMS Thetis* (1835) 3 Hag Adm 228; *The Association and The Rhomney* [1970] 2 Lloyd's Rep 59. As to the development of the law that is administered in Admiralty see PARA 80 et seq.

5 As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 As to the meaning of 'United Kingdom waters' under the Merchant Shipping Act 1995 see PARA 48 note 10.

7 See the Merchant Shipping Act 1995 s 241; and PARA 1003. This does not extend to wreck found outside United Kingdom territorial waters: *Pierce v Bemis, The Lusitania* [1986] QB 384, [1986] 1 All ER 1011, [1986] 1 Lloyd's Rep 132. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 843.

8 As to the meanings of these terms see *Sir Henry Constable's Case* (1601) 5 Co Rep 106a; and PARA 139.

9 See the Merchant Shipping Act 1995 s 255(1); and PARA 987. See also *R v Forty-nine Casks of Brandy* (1836) 3 Hag Adm 257 at 278 per Sir John Nicoll citing Blackstone. See also **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 860, where wreck is further discussed. For procedures for dealing with wreck see the Merchant Shipping Act 1995 ss 236-240; and PARAS 997-1001.

10 *R v Forty-nine Casks of Brandy* (1836) 3 Hag Adm 257; *R v Two Casks of Tallow* (1837) 3 Hag Adm 294.

11 The limits which international right may impose upon any claim under the prerogative of the British Crown to bona vacantia lying on the ocean floor are not clear: see *The Tubantia* [1924] P 78 at 87. As to bona vacantia see **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 335.

12 *HMS Thetis* (1835) 3 Hag Adm 228. As to droits of Admiralty see PARA 139.

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79-228 Admiralty Jurisdiction of the High Court

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123. Vessels wrecked, stranded or in distress.

The statutory provisions relating to vessels in distress¹ apply in circumstances where a United Kingdom² or foreign³ vessel⁴ is wrecked, stranded or in distress at any place on or near the coasts⁵ of the United Kingdom or any tidal water⁶ within United Kingdom waters⁷.

Where any function is conferred on the receiver⁸ by any of those provisions relating to vessels in distress⁹, that function may be discharged by any officer of revenue and customs or any principal officer of the coastguard¹⁰. An officer discharging any such functions of the receiver is to be treated, with respect to any goods or articles belonging to a vessel the delivery of which to the receiver is required by any of the statutory provisions relating to wreck¹¹, as the agent of the receiver¹². However, an officer discharging such functions is not entitled to any fees payable to receivers; nor is he deprived of any right to salvage¹³ to which he would otherwise be entitled¹⁴.

1 Ie the Merchant Shipping Act 1995 ss 232-235 (as to which see PARAS 993-996): see s 231(1); and PARA 992.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 'Foreign', in relation to a ship, means that it is neither a United Kingdom ship nor a small ship (as defined in the Merchant Shipping Act 1995 s 1(2) (see PARA 230)) which is a British ship: see s 313(1); and PARA 19 note 2. As to the meanings of 'British ship' and 'United Kingdom ship' for these purposes see PARA 230; and as to the meaning of 'ship' see PARA 229.

4 As to the meaning of 'vessel' for the purposes of the Merchant Shipping Act 1995 Pt IX (ss 224-255) (salvage and wreck) see PARA 86 note 6.

5 It has been said that a place 20 miles off the coast was not within these words and that 'nearness' related to the extent of territorial waters: see *The Fulham* [1898] P 206 at 214, 8 Asp MLC 425 at 427 obiter per Gorell Barnes J; affd [1899] P 251, CA.

6 As to the meaning of 'tidal water' for these purposes see PARA 987 note 6.

7 See the Merchant Shipping Act 1995 s 231(1); and PARA 992. As to the meaning of 'United Kingdom waters' under the Merchant Shipping Act 1995 see PARA 48 note 10.

8 As to the meaning of 'receiver' for these purposes see PARA 884 note 4.

9 Ie by any of the Merchant Shipping Act 1995 ss 232-235 (as to which see PARAS 993-996): see s 231(2); and PARA 992.

10 See the Merchant Shipping Act 1995 s 231(2); and PARA 992. As to Her Majesty's Coastguard see PARA 57. As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

11 Ie the Merchant Shipping Act 1995 Pt IX Ch II (ss 231-247) (see PARA 992 et seq): see s 231(3). As to the meaning of 'wreck' for these purposes see PARA 987.

12 See the Merchant Shipping Act 1995 s 231(3); and PARA 992.

13 As to the meaning of 'salvage' for these purposes see PARA 883.

14 See the Merchant Shipping Act 1995 s 231(4); and PARA 992.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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124. Wrecked aircraft.

In regard to aircraft, wreck includes any aircraft or any part of an aircraft or any cargo of an aircraft found derelict in or upon the seas surrounding the United Kingdom¹ or the tidal waters of the United Kingdom, or any ports or harbours of the United Kingdom or upon or near the shores of the seas and waters so described². It also includes any aircraft or part of an aircraft or any cargo found or taken into possession outside the United Kingdom and subsequently brought within these limits described³. The application to aircraft of provisions relating to wreck includes provisions relating to vessels laid by or unfit for sea service⁴.

1 As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 See the Aircraft (Wreck and Salvage) Order 1938, SR & O 1938/136, art 2(b). The Aircraft (Wreck and Salvage) Order 1938, SR & O 1938/136, has effect as if made under the Civil Aviation Act 1982 s 87 by virtue of s 105(3): see **AIR LAW** vol 2 (2008) PARA 599. See also PARA 114.

3 See the Aircraft (Wreck and Salvage) Order 1938, SR & O 1938/136, art 2(b); and note 2.

4 See the Civil Aviation Act 1982 s 87(5); and PARA 114.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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(viii) Towage and Pilotage

125. Extent of jurisdiction regarding claims in the nature of towage or pilotage in respect of a ship or an aircraft.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any claim in the nature of towage in respect of a ship or an aircraft², and any claim in the nature of pilotage in respect of a ship or an aircraft³. The jurisdiction extends to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and to all claims wherever arising⁴.

A claim in the nature of towage is not confined to actual towage but extends to escorting services by a tug from outside a port into a port⁵. Ordinary towage, that is towage which is only required for expediting the progress of a vessel not in distress⁶, is to be distinguished from salvage⁷. Although there is a maritime lien in respect of salvage⁸, there is no maritime lien in respect of towage⁹. It is doubtful whether there is a maritime lien in respect of pilotage¹⁰, even though the remuneration of a pilot is similar to wages of master and crew, in respect of which there is a lien¹¹.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 Supreme Court Act 1981 s 20(1)(a), (2)(k). For the purposes of ss 20-23, 'towage', in relation to an aircraft, mean towage while the aircraft is water-borne: see s 24(1); and PARA 93 note 40. See also the text and notes 5-7.

3 Supreme Court Act 1981 s 20(1)(a), (2)(l). For the purposes of ss 20-23, 'pilotage', in relation to an aircraft, mean pilotage while the aircraft is water-borne: see s 24(1); and PARA 93 note 40.

4 See the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86.

5 *The Leoborg* [1962] 2 Lloyd's Rep 146.

6 *The Princess Alice* (1849) 3 Wm Rob 138.

7 For the distinction see *Troilus (Cargo Owners) v Gleneagle (Owners, Master and Crew)* [1951] AC 820, [1951] 2 All ER 40, [1951] 1 Lloyd's Rep 467, HL. For a case in which towage services were held to have developed into salvage services see *The Glenmorven* [1913] P 141.

8 See PARA 113. As to maritime liens generally see PARA 1014 et seq.

9 *Westrup v Great Yarmouth Steam Carrying Co* (1889) 43 ChD 241, 6 Asp MLC 443; see also *The Henrich Björn* (1886) 11 App Cas 270, 6 Asp MLC 1, HL; but see *La Constancia* (1846) 2 Wm Rob 460, 4 Notes of Cases 512 at 521; *The Benares* (1850) 5 LT 185; *The St Lawrence* (1880) 5 PD 250.

10 *The Clan Grant* (1887) 12 PD 139; *The Ambatielos, The Cephalonia* [1923] P 68, 16 Asp MLC 120. Pilotage charges imposed by a competent harbour authority are recoverable as a civil debt or in any other manner in which ship, passenger and goods dues are recoverable by that authority: see the Pilotage Act 1987 s 10(7); and PARA 573. It was held that the previous legislation (giving the right to proceed summarily for dues owing) did not prejudice the right, which has always existed, to bring a claim in rem for dues, although in general it is advisable to pursue the summary remedy: see *The Ambatielos, The Cephalonia* at 75, 122 per Hill J. As to

pilotage generally see PARA 562 et seq. As to harbour authorities see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 619.

11 See PARA 127.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(2) PARTICULAR SUBJECTS OF JURISDICTION/(ix) Supplies, Repairs and Dock Charges/126. Extent of jurisdiction regarding supplies, repairs and dock charges.

(ix) Supplies, Repairs and Dock Charges

126. Extent of jurisdiction regarding supplies, repairs and dock charges.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any claim in respect of goods² and materials supplied to a ship³ for its operation and maintenance⁴, and any claim in respect of the construction, repair or equipment⁵ of a ship or in respect of dock charges or dues⁶. The jurisdiction extends to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and to all claims wherever arising⁷.

The supply of goods and materials to and the repair of a ship do not confer a maritime lien⁸. The repairer has, however, a common law possessory lien⁹.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 As to the meaning of 'goods' for these purposes see PARA 111 note 2.

3 As to the meaning of 'ship' for these purposes see PARA 85 note 7.

4 Supreme Court Act 1981 s 20(1)(a), (2)(m). See *Bridge Oil Ltd v Owners and/or Demise Charterers of the Ship Giuseppe di Vittorio* (1997) Times, 10 November, [1997] All ER (D) 39, CA.

The supply of crew services comes within the meaning of goods and materials for the purposes of the Supreme Court Act 1981 s 20(1)(a), (2)(m): *Lavington International Ltd v The Nore Challenger and The Nore Commander (Bareboat Charterers)* [2001] 2 All ER (Comm) 667, [2001] 2 Lloyd's Rep 103.

The term 'necessaries', used to describe claims similar to the Supreme Court Act 1981 s 20(1)(a), (2)(m) in earlier legislation (see eg the Supreme Court of Judicature (Consolidation) Act 1925 s 22(1)(a)(vii) (repealed)), does not appear in the Supreme Court Act 1981. The jurisdiction under the Administration of Justice Act 1956 s 1(1) (repealed) was no narrower, however, than the old jurisdiction in respect of necessities (see *The Fairport (No 5)* [1967] 2 Lloyd's Rep 162, in which it was held that money lent for the purchase of supplies could be recovered under the Administration of Justice Act 1956 s 1(1)(m) (repealed)), and the existing jurisdiction is maintained by the Supreme Court Act 1981 s 20(1)(c) (see PARA 85). The question whether the supply of services could be brought under the Administration of Justice Act 1956 s 1(1)(m) (now the Supreme Court Act 1981 s 20(1)(a), (2)(m)) was raised, but not decided, in *The Queen of the South* [1968] P 449, [1968] 1 All ER 1163, [1968] 1 Lloyd's Rep 182, where Brandon J at 455, 1168, 188, respectively, suggested that the effect of the 'sweeping-up' provision at the end of the Administration of Justice Act 1956 s 1(1) (now the Supreme Court Act 1981 s 20(1)(c), (d): see PARA 85) is to preserve to the court, independently of, and concurrently with, any jurisdiction specifically conferred by the lettered paragraphs of the Administration of Justice Act 1956 s 1(1) (now the Supreme Court Act 1981 s 20(1)(a), (2)) over claims for, inter alia, necessities, the same jurisdiction as was formerly conferred by the repealed enactments. For a definition of 'necessaries' see *The Riga* (1872) LR 3 A & E 516, 1 Asp MLC 246. See also *The River Rima* [1987] 3 All ER 1, CA; affd [1988] 2 All ER 641, [1988] 1 WLR 758, [1988] 2 Lloyd's Rep 193, HL (leased cargo containers not goods supplied to a ship for her operation).

5 Although fuel is not included in the term 'equipment', it is clearly material supplied to a ship for her operation: see *The D'Vora* [1952] 2 All ER 1127, [1953] 1 WLR 34, [1952] 2 Lloyd's Rep 404. A classification certificate has been held to be 'equipment': *The Stinne Peter* (1986, unreported).

6 Supreme Court Act 1981 s 20(1)(a), (2)(n).

7 See the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86.

8 *The Two Ellens* (1872) LR 4 PC 161; *The Henrich Björn* (1886) 11 App Cas 270, 6 Asp MLC 1, HL; *The Cella* (1888) 13 PD 82, CA; *The James W Elwell* [1921] P 351. As to the security obtained by arrest in proceedings in rem see *The Cella*; *The James W Elwell*; *The Zafiro* [1960] P 1, [1959] 2 All ER 537. As to maritime liens generally see PARA 1014 et seq.

9 *The Tergeste* [1903] P 26; *The St Merriel* [1963] P 247, [1963] 1 All ER 537. As to possessory liens generally see **LIEN**.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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(x) Wages and Disbursements

127. Extent of jurisdiction regarding wages and master's disbursements.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any claim by a master² or member of a crew of a ship³ for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages)⁴; and any claim by the master of a ship in respect of disbursements made on account of a ship⁵. The jurisdiction extends to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and to all claims wherever arising⁶.

There is a maritime lien in respect of seamen's wages⁷, and the master of a ship has the same lien for his remuneration and all disbursements or liabilities properly made or incurred by him on account of the ship⁸.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 As to the meaning of 'master' for these purposes see PARA 85 note 14.

3 As to the meaning of 'ship' for these purposes see PARA 85 note 7. As to foreign ships see PARA 128.

4 Supreme Court Act 1981 s 20(1)(a), (2)(o). The text refers to a mercantile marine superintendent appointed under the Merchant Shipping Act 1995 s 296 (see PARA 60) to whom any dispute relating to the amount payable to a seaman employed under a crew agreement may be submitted for decision: see ss 33, 313(1); and PARA 470. As to amounts recoverable as wages see PARA 130.

5 Supreme Court Act 1981 s 20(1)(a), (2)(p). As to the sums that may be recovered as master's disbursements see PARA 131; and as to disbursements by persons other than a master see PARA 132.

6 See the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86.

7 *The Sydney Cove* (1815) 2 Dods 11; *The Nymph* (1856) Sw 86. The maritime lien in respect of wages due under an ordinary mariner's contract appears always to have existed; it would seem that the effect of the Admiralty Court Act 1861 s 10 (repealed) was to extend the jurisdiction, but not the maritime lien, to cases where wages are due under a special contract: see *The Sara* (1889) 14 App Cas 209, 6 Asp MLC 413, HL. In *The British Trade* [1924] P 104, 16 Asp MLC 296, it was conceded that wages under a special contract, so far as earned on board, conferred a maritime lien, but it was decided that the lien did not extend to damages for breach of a service contract; cf *The Halcyon Skies* [1977] QB 14, [1976] 1 All ER 856 (maritime lien in respect of pension fund contributions). The requirement that the wages be 'earned on board' is no longer relevant to the jurisdiction under the Supreme Court Act 1981, but would seem still to be the test as respects the lien. There will be no lien in respect of severance pay: see *The Tacoma City* [1991] 1 Lloyd's Rep 330, CA. The scope of the master's lien for wages will be the same as that of a seaman: *The Ever Success* [1999] 1 Lloyd's Rep 824. The maritime lien will extend to any wages paid via an agency to seamen's dependants: *The Turiddu* [2000] ICR 354, [1999] 2 Lloyd's Rep 401, CA. A seaman's lien is not capable of being renounced by any agreement: see the Merchant Shipping Act 1995 s 39; and PARA 476. As to the priority ranking of wages claims as a maritime lien see *The Ruta* [2000] ICR 1024 at 1028, [2000] 1 Lloyd's Rep 359 at 361 per Steel J. As to maritime liens generally see PARA 1014 et seq.

8 See the Merchant Shipping Act 1995 s 41; and PARA 477. As to the limits of the lien for disbursements see *The Castlegate* [1893] AC 38, 7 Asp MLC 284, HL. A volunteer who pays the wages of the master and crew without the sanction of the court does not acquire by subrogation or otherwise the rights of the master and crew as regards the recovery of those wages: see *The Leoborg (No 2)* [1964] 1 Lloyd's Rep 380; following *The Petone* [1917] P 198 at 208 per Hill J. Payment may, however, be made with the leave of the court, and the

payer be subrogated to those rights: see *Sameiet Stavos (OH Meling Rederi) v The Berostar (Owners)* [1970] 2 Lloyd's Rep 403.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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128. Special position of foreign ships.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine claims for wages by the master² or a member of the crew of a foreign ship³, and nothing in the statutory provisions which confer such jurisdiction⁴ is to be construed as limiting the jurisdiction of the High Court to refuse to entertain such a claim⁵.

Notice of such claims must be sent to the consul in London (if there is one) of the state concerned⁶ and in certain cases the claim may not proceed if the consul objects⁷.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 As to the meaning of 'master' for these purposes see PARA 85 note 14.

3 See the Supreme Court Act 1981 s 20(1)(a), (2)(o); and PARA 127. See also *The Tagus* [1903] P 44, 9 Asp MLC 371. As to the meaning of 'ship' for these purposes see PARA 85 note 7.

4 Ie nothing in the Supreme Court Act 1981 ss 20-23 (see PARA 85 et seq): see s 24(2).

5 See the Supreme Court Act 1981 s 24(2)(a); and PARA 85. For cases on the exercise of the discretion see *The Nina* (1867) LR 2 PC 38; *The Leon XIII* (1883) 8 PD 121, 5 Asp MLC 73, CA.

6 As to the requirements to send such notice see PARA 161. Any statement made by the consul as to the desirability or otherwise of the claim being tried in England will be considered as a factor relevant to the exercise of the court's discretion, but the consul has no power of veto save as stated in the text and note 7: see the cases cited in note 5; and *The Octavie* (1863) Brown & Lush 215, 33 LJPM & A 115.

7 See the Consular Relations Act 1968 ss 4, 16 (and Orders in Council made thereunder, which give effect to a number of international agreements entered into by the United Kingdom); and **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 303.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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129. Time limit for proceedings.

Claims for wages in the Admiralty Court¹ must be brought within six years from the date on which the cause of action accrued².

¹ As to which see PARA 127 et seq.

² See under the general requirement that an action to recover any sum recoverable by virtue of any enactment is not to be brought after the time stated in the text: see the Limitation Act 1980 s 9(1); and **LIMITATION PERIODS**. As to restrictions generally limiting the time within which claims must be brought within the Admiralty jurisdiction of the High Courts see PARA 151 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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130. What sums may be recovered as wages.

The Admiralty jurisdiction of the High Court in respect of wages¹ includes a claim for any sum allotted out of wages or adjudged by a superintendent² to be due by way of wages³.

Contributions to a foreign seaman's union and insurance fund, which were deductions made by the master from crew's wages, have been held to be recoverable as wages where the claim was made by the master⁴. The cost of repatriation, contributions in respect of foreign income tax and even stamp duty on insurance contributions have been recovered by the master⁵.

Judgment in a claim for wages may include wages which have accrued since the date of the issue of the claim form⁶. A claim by a member of the crew of a ship for damages for wrongful dismissal can be maintained by him in a claim for wages⁷. The court may order that all or any part of the wages claimed have been forfeited for desertion, misconduct or other offences⁸.

1 See under the Supreme Court Act 1981 s 20(1)(a), (2)(o): see PARA 127. As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 See a mercantile marine superintendent appointed under the Merchant Shipping Act 1995 s 296 (see PARA 60) to whom any dispute relating to the amount payable to a seaman employed under a crew agreement may be submitted for decision: see ss 33, 313(1); and PARA 470.

3 See the Supreme Court Act 1981 s 20(1)(a), (2)(o); and PARA 127. Seamen's wages are dealt with by the Merchant Shipping Act 1995 ss 30-40 (see PARA 467 et seq) and include interest on unpaid wages: see s 30(3) (seaman employed under a crew agreement) (cited in PARA 467); and s 35 (master or person employed otherwise than under a crew agreement) (cited in PARA 472).

4 *The Fairport (No 3)* [1966] 2 Lloyd's Rep 253; *The Westport (No 4)* [1968] 2 Lloyd's Rep 559; but such items are not recoverable by a third party with no authority from the master or crew: see *The Acrux* [1965] P 391, [1965] 2 All ER 323, [1965] 1 Lloyd's Rep 565. As to payment of wages by third parties see PARA 127 note 8. See also *The Halcyon Skies* [1977] QB 14, [1976] 1 All ER 856 (contributions to pension fund recoverable as wages).

5 *The Westport (No 4)* [1968] 2 Lloyd's Rep 559.

6 *The Fairport* [1967] P 167, [1966] 2 All ER 1026, [1966] 2 Lloyd's Rep 7.

7 *The Great Eastern* (1867) LR 1 A & E 384. An order made by a duly constituted naval court dismissing a seaman with forfeiture of his wages is a bar to a subsequent claim by a seaman for wrongful dismissal: *Hutton v Ras Steam Shipping Co Ltd* [1907] 1 KB 834, 10 Asp ML 386, CA.

8 See *The MacLeod* (1880) 5 PD 254; *The Fairport* (1884) 10 PD 13, 5 Asp MLC 348. As to deductions from wages and loss of right to wages see the Merchant Shipping Act 1995 ss 32, 38(3), 40; and PARA 464 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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131. What sums may be recovered as master's disbursements.

Disbursements made by the master of a ship to be recoverable must be properly incurred by him on account of the ship in the ordinary course of his employment, and in his capacity as master¹. They must be within his implied authority from the owners², and do not include disbursements made by him for purposes for which the charterers ought to have made provision³.

1 *The Ripon City* [1897] P 226, 8 Asp MLC 304. See also the Merchant Shipping Act 1995 s 41 (cited in PARA 477); and PARA 1021.

2 *The Turgot* (1886) 11 PD 21, 5 Asp MLC 548; *The Ripon City* [1897] P 226, 8 Asp MLC 304.

3 *The Turgot* (1886) 11 PD 21, 5 Asp MLC 548; *The Castlegate* [1893] AC 38 at 47. A collateral liability undertaken by the master on a debt of the owner is not a disbursement: *The Orienta* [1895] P 49, 7 Asp MLC 529, CA.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(2) PARTICULAR SUBJECTS OF JURISDICTION/(x) Wages and Disbursements/132. Disbursements made by a shipper, charterer, or agent on account of a ship.

132. Disbursements made by a shipper, charterer, or agent on account of a ship.

The Admiralty jurisdiction of the High Court in respect of wages¹ includes jurisdiction to hear and determine any claim by a shipper, charterer or agent² in respect of disbursements made on account of a ship³. The jurisdiction extends to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and to all claims wherever arising⁴.

Such claims do not confer a maritime lien⁵.

1 le under the Supreme Court Act 1981 s 20(1)(a), (2)(p): see PARA 127. As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 A ship's agent may include a fee for his services in his claim in respect of disbursements made on account of a ship: *The Westport (No 3)* [1966] 1 Lloyd's Rep 342. However, the disbursements made must relate to an identified ship: see *The Lloyd Pacifico* [1995] 1 Lloyd's Rep 54. 'Agent' does not include an insurance broker: *Bain Clarkson Ltd v Owners of Sea Friends* [1991] 2 Lloyd's Rep 322, CA.

3 Supreme Court Act 1981 s 20(1)(a), (2)(p). As to the meaning of 'ship' for these purposes see PARA 85 note 7. For the position with regard to arrest by shipbrokers and agents in respect of necessary disbursements after notice of impending winding up is given see *The Zafiro* [1960] P 1, [1959] 2 All ER 537.

4 See the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86.

5 See *The Zafiro* [1960] P 1, [1959] 2 All ER 537. An insurance premium is not a disbursement on account of a ship see *Bain Clarkson Ltd v Owners of Sea Friends* [1991] 2 Lloyd's Rep 322, CA. As to maritime liens generally see PARA 1014 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(2) PARTICULAR SUBJECTS OF JURISDICTION/(xi) General Average/133. Extent of jurisdiction regarding a general average act.

(xi) General Average

133. Extent of jurisdiction regarding a general average act.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any claim arising out of an act which is or is claimed to be a general average act². The jurisdiction extends to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and to all claims wherever arising³.

The shipowner has a lien for general average on the cargo for its contribution and may require, before he parts with the cargo, security for the due payment of general average, whether the claim is on his own behalf or on behalf of other cargo owners⁴. The shipowner also has the right to enforce contribution by bringing proceedings⁵; this right is shared by any other person claiming contribution⁶.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 Supreme Court Act 1981 s 20(1)(a), (2)(q). A general average act occurs when any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled (that is ship and cargo) in the common adventure: see the Marine Insurance Act 1906 s 66(2); and **INSURANCE** vol 25 (2003 Reissue) PARA 420. See also *Birkley v Presgrave* (1801) 1 East 220; and **CARRIAGE AND CARRIERS**.

It is usual for contracts for the carriage of goods by sea to provide for the adjustment of general average according to the York-Antwerp Rules 1974, a voluntary international code on the subject which differs in a number of respects from the rules of the maritime law. For those rules see **INSURANCE** vol 25 (2003 Reissue) PARA 426 et seq. It has been held that, where the contract of affreightment incorporates the York-Antwerp Rules, the rights and obligations of parties to the adventure in relation to general average are contractual: see *The Astraea* [1971] 2 Lloyd's Rep 494, following *Milburn & Co v Jamaica Fruit Importing and Trading Co of London* [1900] 2 QB 540, 9 Asp MLC 122, CA; *Goulandris Bros Ltd v B Goldman & Sons Ltd* [1958] 1 QB 74, [1957] 3 All ER 100, [1957] 2 Lloyd's Rep 207.

3 See the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86.

4 *Crooks v Allan* (1879) 5 QBD 38, 4 Asp MLC 216.

5 *Anderson v Ocean Steamship Co* (1884) 10 App Cas 107, 5 Asp MLC 401, HL.

6 *Dobson v Wilson* (1813) 3 Camp 480 (cargo); *Morrison Steam Ship Co Ltd v SS Greystoke Castle (Cargo Owners)* [1947] AC 265 at 312, [1946] 2 All ER 696 at 718-719, HL, per Lord Uthwatt (cargo); *Pirie & Co v Middle Dock Co* (1881) 44 LT 426, 4 Asp MLC 388 (freight).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any

enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(2) PARTICULAR SUBJECTS OF JURISDICTION/(xii) Bottomry/134. Extent of jurisdiction regarding claims arising out of bottomry.

(xii) Bottomry

134. Extent of jurisdiction regarding claims arising out of bottomry.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any claim arising out of bottomry². Claims of bottomry (and respondentia³) are brought for the purpose of enforcing bottomry bonds⁴, which are contracts in the nature of mortgage of a ship or cargo on which the owner, or master acting for the owner⁵, borrows money in circumstances of unforeseen necessity or in case of distress to enable him to repair the ship or to pay for the repairs and dispatch of the vessel for the completion of her voyage⁶, and pledges the ship or cargo *pars pro tota* for repayment⁷. If the ship is lost in the course of the voyage the lender on the bottomry bond loses his money unless the terms of the bond otherwise provide; but if the ship arrives safe, then he may recover the loan, with interest, which is sometimes called 'maritime interest' and may be in proportion to the risks of the voyage⁸.

The jurisdiction in respect of claims arising out of bottomry⁹ extends to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and to all claims wherever arising¹⁰.

There is a maritime lien in respect of bottomry¹¹.

As long ago as 1926 bottomry bonds were uncommon¹²; today they are obsolete in practice.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 Supreme Court Act 1981 s 20(1)(a), (2)(r). As to what constitutes bottomry see the text and notes 3-8; and as to the master's authority to hypothecate the ship and freight by a contract of bottomry see PARA 437.

3 Respondentia is the proper technical term where the cargo alone is hypothecated: see PARA 437.

4 See *The Sultan (cargo ex)* (1859) Sw 504 at 510 per Dr Lushington. It is suggested that claims arising out of bottomry for the purposes mentioned in the text include claims on any instruments used to effect bottomry, whether bonds, bills or otherwise.

5 See *The Gratitude* (1801) 3 Ch Rob 240.

6 See *Soares v Rahn, The Prince of Saxe Coburg* (1839) 3 Moo PCC 1. The necessity for the loan is essential to the validity of a bottomry bond, and must be proved in any claim on the bond: *The Karnak* (1868) LR 2 A & E 289 (on appeal (1869) LR 2 PC 505); *The St George* [1926] P 217.

7 A bottomry bond is to be distinguished from a loan on the personal credit of the owner or master: see *The Rhodamante* (1813) 1 Dods 201; *The Haabet* [1899] P 295; *The St George* [1926] P 217. As to the particulars which should be contained in a valid instrument of bottomry see *The James W Elwell* [1921] P 351.

8 See *The Atlas* (1827) 2 Hag Adm 48 at 53. Maritime risk (ie the condition that payment is conditional upon safe arrival) is an essential feature of a bottomry bond: *The Indomitable* (1859) Sw 446. Maritime interest is not essential: *The Haabet* [1899] P 295.

9 Ie the jurisdiction set out in the Supreme Court Act 1981 s 20(1)(a), (2)(r) (see the text and notes 1-2).

10 See the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86.

11 *The Ripon City* [1897] P 226. As to maritime liens generally see PARA 1014 et seq.

12 See *The St George* [1926] P 217 at 229 per Lord Merrivale P.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(2) PARTICULAR SUBJECTS OF JURISDICTION/(xiii) Forfeiture, Condemnation and Restoration of Ship or Goods/135. Extent of jurisdiction in respect of forfeiture, condemnation and restoration.

(xiii) Forfeiture, Condemnation and Restoration of Ship or Goods

135. Extent of jurisdiction in respect of forfeiture, condemnation and restoration.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure². The jurisdiction extends to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and to all claims wherever arising³.

As the court has jurisdiction in respect of any claim for forfeiture or condemnation of a ship or goods, it may grant a declaration in respect of the proceeds of sale of a ship held by the Admiralty Marshal⁴.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq; and see especially PARA 85, where the preservation of the inherent, together with the statutory, jurisdiction of the High Court is discussed. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 Supreme Court Act 1981 s 20(1)(a), (2)(s).

3 See the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86.

4 *The Skylark* [1965] P 474, [1965] 3 All ER 380. As to the Admiralty Marshal see PARA 160 note 6.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(2) PARTICULAR SUBJECTS OF JURISDICTION/(xiii) Forfeiture, Condemnation and Restoration of Ship or Goods/136. Forfeiture of ship under the Merchant Shipping Act 1995.

136. Forfeiture of ship under the Merchant Shipping Act 1995.

The Merchant Shipping Act 1995 provides for proceedings on forfeiture¹ where any ship² either wholly or as to any share in it becomes subject to forfeiture³ under the provisions of that Act, which relate to: (1) causing a ship which is not a British ship to appear to be a British ship⁴; (2) concealing the nationality of a British ship⁵; and (3) sale of a ship where transmitted to a person not qualified to own a British ship⁶.

1 See the Merchant Shipping Act 1995 s 7; and PARA 235.

2 As to the meaning of 'ship' for these purposes see PARA 229.

3 See the Merchant Shipping Act 1995 s 7; and PARA 235. It would appear that the wording of s 7 is intended to protect the interest of a bona fide purchaser, who formerly had no title as against the Crown: see *The Annendale* (1877) 2 PD 218, CA, decided under the Merchant Shipping Act 1854 s 103 (repealed).

4 See the Merchant Shipping Act 1995 s 3(1) (cited in PARA 1113), s 15 (cited in PARA 1117). As to the meaning of 'British ship' for these purposes see PARA 229.

5 See the Merchant Shipping Act 1995 s 3(4) (cited in PARA 1113). See also *The Sceptre* (1876) 3 Asp MLC 269; and *The Annendale* (1877) 2 PD 218. Specific provisions deal with penalties for the improper use of British national colours and the forfeiture of colours improperly displayed: see the Merchant Shipping Act 1995 s 4 (cited in PARA 1114). The jurisdiction under s 4, in so far as it is not covered by the Supreme Court Act 1981 s 20(1)(a), (2)(s) (Admiralty jurisdiction in respect of forfeiture etc) (see PARA 135), is preserved by s 20(1)(c) (see PARA 85), being an ancient jurisdiction of the Court of Admiralty: see *R v Ewen* (1856) 2 Jur NS 454; and see further PARA 1114.

6 See the Merchant Shipping Act 1995 s 16, Sch 1 para 4(4) (cited in PARA 306); and *The Millicent* [1891] WN 162.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(2) PARTICULAR SUBJECTS OF JURISDICTION/(xiii) Forfeiture, Condemnation and Restoration of Ship or Goods/137. Forfeiture of dangerous goods under the Merchant Shipping Act 1995.

137. Forfeiture of dangerous goods under the Merchant Shipping Act 1995.

Under the Merchant Shipping Act 1995, the High Court may condemn as forfeited any dangerous goods¹ sent or carried, or attempted to be sent or carried, on board any vessel, British or foreign², without being properly marked, or without a written notice having been given of the description of the goods, or under a false description or with a false description of the sender or carrier³.

1 For these purposes, 'dangerous goods' means goods designated as dangerous goods by safety regulations under the Merchant Shipping Act 1995: see s 87(5); and PARA 656.

2 For these purposes, 'foreign', in relation to a ship, means that it is neither a United Kingdom ship nor a small ship (as defined in the Merchant Shipping Act 1995 s 1(2) (see PARA 230)) which is a British ship: see s 313(1); and PARA 19 note 2. As to the meanings of 'British ship' and 'United Kingdom ship' for these purposes see PARA 230; as to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

3 See the Merchant Shipping Act 1995 s 87; and PARA 656. See also the Supreme Court Act 1981 s 20(1)(a), (2)(s); and PARA 135. See also, as to the rights of shipowners with respect to dangerous goods, **CARRIAGE AND CARRIERS**.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(2) PARTICULAR SUBJECTS OF JURISDICTION/(xiii) Forfeiture, Condemnation and Restoration of Ship or Goods/138. Cases under the Foreign Enlistment Act 1870.

138. Cases under the Foreign Enlistment Act 1870.

All proceedings for the condemnation and forfeiture of a ship, or ship and equipment, or arms and munitions of war, in pursuance of the Foreign Enlistment Act 1870¹, are directed to be taken in the Court of Admiralty, and not in any other court², and accordingly now fall within the Admiralty jurisdiction of the High Court³. In such cases, in addition to any power granted by that Act, the Court of Admiralty has all powers over a ship or any other matter brought before it which it has in the case of a ship or matter brought before it in the exercise of its ordinary jurisdiction⁴.

1 Ships built or equipped without authority for a foreign naval service where the foreign state is at war with a friendly state, and ships fitted out for expeditions against a friendly state are liable to forfeiture under the Foreign Enlistment Act 1870: see ss 8, 11; and **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARAS 413-414.

2 See the Foreign Enlistment Act 1870 s 19.

3 See the Supreme Court Act 1981 s 20(1)(a), (2)(s); and PARA 135.

4 See the Foreign Enlistment Act 1870 s 19.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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(xiv) Droits of Admiralty

139. Extent of jurisdiction.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any claim, on behalf of the Crown, for droits of Admiralty². The jurisdiction extends to all claims wherever arising³. Things found derelict⁴ on the sea, including flotsam⁵, jetsam⁶ or lagan⁷ which, if they have not touched the ground, are Admiralty droits⁸. Such things must be returned to their true owner, if he appears in time; if not, they must be condemned as droits⁹. Property found in the possession of convicted pirates and clearly belonging to them is also included in the term droits of Admiralty, but not property in the possession of pirates but belonging to others¹⁰. Remuneration in the nature of salvage is also payable to the captors of royal fish (whales and sturgeons, which are droits of Admiralty¹¹), and is recoverable in an Admiralty claim of salvage¹².

As there is a statutory procedure under the Merchant Shipping Act 1995 for dealing with wreck (which for this purpose includes jetsam, flotsam, lagan and derelict¹³) and a statutory method of dealing with disputes as to title to wreck¹⁴ summarily, in most cases little occasion arises for the exercise of the jurisdiction of the High Court under this head. The Crown's right to claim wreck does not extend to unclaimed wreck found outside United Kingdom territorial waters¹⁵.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 See the Supreme Court Act 1981 s 20(1)(a), (2)(s). As to when prize is a droit of Admiralty see **PRIZE** vol 36(2) (Reissue) PARA 803; and as to the distinction in time of war between droits of Admiralty and droits of the Crown see **PRIZE** vol 36(2) (Reissue) PARA 846.

3 See the Supreme Court Act 1981 s 20(7)(b); and PARA 86.

4 As to the meaning of 'derelict' see *HMS Thetis* (1835) 3 Hag Adm 228; *The Tubantia* [1924] P 78 at 87-88; *The Association and The Rhomney* [1970] 2 Lloyd's Rep 59. See also *Pierce v Bemis, The Lusitania* [1986] QB 384, [1986] 1 All ER 1011, [1986] 1 Lloyd's Rep 132.

5 'Flotsam' are goods which float when a ship is sunk: see *Sir Henry Constable's Case* (1601) 5 Co Rep 106a; *The Gas Float Whitton (No 2)* [1896] P 42 at 51, CA.

6 'Jetsam' are goods thrown into the sea to lighten a ship which nevertheless sinks: see *Sir Henry Constable's Case* (1601) 5 Co Rep 106a.

7 'Lagan' (or 'ligan') are goods heavier than water (buoyed so that they will not sink) cast into the sea from a ship which perishes: see *Sir Henry Constable's Case* (1601) 5 Co Rep 106a.

8 *R v Forty-nine Casks of Brandy* (1836) 3 Hag Adm 257.

9 *R v Property Derelict* (1825) 1 Hag Adm 383.

10 *The Panda* (1842) 1 Wm Rob 423. The Admiralty jurisdiction of the High Court extends to the condemnation as droits of Admiralty of ships, goods and other property taken from pirates by Her Majesty's ships or the restoration of such goods and property to the owner on payment of one-eighth of the value of the property by way of salvage remuneration: see the Piracy Act 1850 s 5 (amended by the Statute Law Revision Act 1875; and the Statute Law Revision Act 1891).

- 11 See the statute *Prerogativa Regis* (temp incert), c 13; *Cinque Ports (Lord Warden) v R* (1831) 2 Hag Adm 438.
- 12 *Cinque Ports (Lord Warden) v R* (1831) 2 Hag Adm 438 at 441.
- 13 See the Merchant Shipping Act 1995 ss 236-240; and PARAS 997-1001. As to the meaning of 'wreck' under the Merchant Shipping Act 1995 see PARA 987.
- 14 See the Merchant Shipping Act 1995 ss 241-244; and PARAS 1003-1006.
- 15 See *Pierce v Bemis, The Lusitania* [1986] QB 384, [1986] 1 All ER 1011, [1986] 1 Lloyd's Rep 132. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to what constitute the territorial waters of the United Kingdom see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 121 et seq; **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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(3) PRACTICE OF THE HIGH COURT

(i) The Admiralty Registrar

A. THE ADMIRALTY REGISTRAR AND REGISTRY

140. The Admiralty Registrar.

The Admiralty Registrar is a Queen's Bench Division Master¹ and a senior officer of the Admiralty and Commercial Court Registry². In order to qualify for appointment as an Admiralty Registrar, a person must have a seven year general qualification³.

The Admiralty Registrar has responsibility for Admiralty claims⁴ and has all the powers of the Admiralty judge except where a rule or practice direction provides otherwise⁵. Although much of the practice that applies in the Admiralty Court is the same as that which applies in the Commercial Court⁶, one significant area of difference is that many interim applications are heard by the Admiralty Registrar⁷.

1 See CPR 61.1(2)(l) (CPR Pt 61 added by SI 2001/4015), which defines 'Registrar' for the purposes of CPR Pt 61 as the Queen's Bench Division Master with responsibility for Admiralty claims. As to the meaning of 'Admiralty claim' for these purposes, and as to the application of CPR Pt 61, see PARA 91 note 3. As to Queen's Bench Masters generally see **COURTS** vol 10 (Reissue) PARA 654.

2 As to the Admiralty and Commercial Court Registry see PARA 142. There was a Registrar attached to the old High Court of Admiralty and his office was preserved by the Supreme Court of Judicature Act 1873 s 77 (repealed).

3 See the Supreme Court Act 1981 s 88, Sch II Pt II; and **COURTS** vol 10 (Reissue) PARA 660. A person has a 'general qualification' if he has a right of audience in relation to any class of proceedings in any part of the Supreme Court, or all proceedings in county courts or magistrates' courts: see the Courts and Legal Services Act 1990 s 71(3); and **LEGAL PROFESSIONS**. The Admiralty Registrar is barred from legal practice: see the Courts and Legal Services Act 1990 s 75, Sch 11; and **COURTS** vol 10 (Reissue) PARA 660.

4 See note 1.

5 CPR 61.1(4) (as added: see note 1). As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 157 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615.

6 See note 5.

7 See the Admiralty and Commercial Courts Guide para N1.3. As to interim applications in the Admiralty Court see PARA 204.

The Admiralty and Commercial Courts Guide provides additional guidance about the conduct of proceedings in the Admiralty and Commercial Courts and, within the framework of the Civil Procedure Rules and the associated Practice Directions, establishes the practice to be followed in those courts: see para A1.2; and PARA 157 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

140 The Admiralty Registrar

NOTE 7--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para N1.3.

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141. General jurisdiction of the Admiralty Registrar.

In general, the Admiralty Registrar¹ deals with all applications in Admiralty claims² on matters which elsewhere in the Queen's Bench Division would be dealt with on application by a Master³. In addition to the power of the Admiralty Registrar to hear references⁴, he has the power as a judge of the Queen's Bench Division to transact all such business and exercise all such authority and jurisdiction as under the Supreme Court Act 1981 may generally be transacted and exercised by a Queen's Bench Division judge in private⁵.

Appeal from an order or decision of the Admiralty Registrar lies to a single judge of the High Court⁶.

1 As to the Admiralty Registrar see PARA 140.

2 As to the meaning of 'Admiralty claim' for the purposes of CPR Pt 61 see PARA 91 note 3. As to CPR Pt 61 see further note 5.

3 See PARA 140. A Master may refer to a judge any matter which he thinks should properly be decided by a judge, and the judge may either dispose of the matter or refer it back to the Master: see *Practice Direction--Applications* PD 23A para 1; and **CIVIL PROCEDURE**. As to Queen's Bench Masters generally see **COURTS** vol 10 (Reissue) PARA 654.

4 As to matters that may be referred to the Admiralty Registrar see PARA 143 et seq.

5 See the Supreme Court Act 1981 s 61(1), Sch 1 para 2; and **COURTS** vol 10 (Reissue) PARA 613. The Admiralty Registrar also has the procedural powers conferred on him by the Civil Procedure Rules: see especially CPR Pt 61; and *Practice Direction--Admiralty Claims* PD 61 (cited in PARA 157 et seq). CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615.

6 See *Practice Direction--Appeals* PD 52 para 2A.1, Table 1 (appeal lies from a Master or district judge of the High Court to a High Court judge); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1658. As to objections to a decision of the Admiralty Registrar following a reference see PARA 149.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(i) The Admiralty Registrar/A. THE ADMIRALTY REGISTRAR AND REGISTRY/142. Admiralty and Commercial Court Registry.

142. Admiralty and Commercial Court Registry.

The Admiralty and Commercial Court Registry is the administrative office for the Admiralty Court¹, to which all Admiralty claims² are (or, in certain cases, may be) assigned³. Applications made for Admiralty claims together with the requisite documents may be posted to the Admiralty and Commercial Registry⁴.

Except for orders made by the court on its own initiative and unless the court orders otherwise, every judgment or order made in Admiralty proceedings will be drawn up by the parties⁵.

1 See the Admiralty and Commercial Courts Guide para A2.

The Admiralty and Commercial Courts Guide provides additional guidance about the conduct of proceedings in the Admiralty and Commercial Courts and, within the framework of the Civil Procedure Rules and the associated Practice Directions, establishes the practice to be followed in those courts: see para A1.2; and PARA 157 et seq.

2 As to the meaning of 'Admiralty claim' for the purposes of CPR Pt 61 see PARA 91 note 3. As to CPR Pt 61 see note 3.

3 As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91. As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 157 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615.

4 See the Admiralty and Commercial Courts Guide para N12.1. In addition to the classes of business for which the use of postal facilities is permitted by the Civil Procedure Rules or by the Admiralty and Commercial Courts Guide, the filing of requests for cautions against arrest and of collision statements of case is also permitted in Admiralty matters: see the Admiralty and Commercial Courts Guide para N12.2. As to documents sent by post to the Admiralty and Commercial Registry for filing see para N12.3; and as to the issue of documents when the Registry is closed see para N7. As to requests for cautions against arrest see PARA 166; and as to collision statements of case see PARA 182 et seq.

A party to any proceedings may, unless the court orders otherwise, obtain from the records of the court (as well as other court documents that are specified) a copy of any claim form or other statement of case together with any documents filed with or attached to or intended by the claimant to be served with such claim form: see CPR 5.4B(1); and **CIVIL PROCEDURE**. A party to proceedings also may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party or communication between the court and a party or another person: see CPR 5.4B(2); and **CIVIL PROCEDURE**.

5 See CPR 58.15; *Practice Direction--Commercial Court* PD 58 para 14.2; and **CIVIL PROCEDURE**.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

142 Admiralty and Commercial Court Registry

NOTE 1--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) paras A2, A1.2.

NOTE 4--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) paras N12.1-N12.3, N7.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(i) The Admiralty Registrar/B. REFERENCES TO THE REGISTRAR/143. References to the Admiralty Registrar.

B. REFERENCES TO THE REGISTRAR

143. References to the Admiralty Registrar.

The Admiralty Court¹ may at any stage in a claim² refer any question or issue for determination by the Admiralty Registrar³ (a 'reference')⁴. For a reference to be valid, it is necessary to have an order for reference, which can be an order of the court, an order made following the parties' agreement, or as a term of a decree for limitation. The court will not order a reference if it can satisfactorily dispose of the question⁵.

In collision claims⁶, it is usual for liability to be tried first and for the assessment of damages and interest to be referred to the Admiralty Registrar⁷. The following matters are normally also referred to the Admiralty Registrar: questions as to consequential damage in general⁸; the assessment of damage to cargo; the assessment of damages in salvage claims when damage has been done to the salvaged or salvaging vessel in the course of the services⁹; the investigation of accounts, for example in claims for goods or materials, or for repairs or disbursements and in wages and mortgage claims¹⁰; the assessment of damages in respect of loss of life and personal injuries¹¹; in limitation claims¹², the determination, after a decree limiting the claimant's liability has been made in court, of the right of the claimants to share in the fund, and the amounts due to each of them out of that fund¹³; and the decision as to which claimants for salvage are entitled to preferential treatment¹⁴.

In modern practice, the Admiralty Registrar decides questions without the assistance of merchants, but he may be assisted by a nautical assessor or assessors if questions of navigation or seamanship, or both, may arise on the reference¹⁵.

1 As to the meaning of the 'Admiralty Court' for these purposes see PARA 91 note 3.

2 Ie an 'Admiralty claim': see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91. As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 157 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615.

3 As to the Admiralty Registrar see PARA 140.

4 *Practice Direction--Admiralty Claims* PD 61 para 13.1. The general practice pre-dates the Judicature Acts: see eg *The Empress Eugenie* (1860) Lush 138; *The Lemuella* (1860) Lush 147; *The Princess Helena* (1861) Lush 190. See also *The Gertrude* (1888) 13 PD 105, CA (interest on damages was properly awarded by the registrar; the parties, having proceeded on the understanding that the Admiralty practice should apply, had impliedly consented to abide by such practice).

5 For an example where the issue of damages is straightforward see *The Eléonore* (1863) Brown & Lush 185.

6 As to collision claims see PARA 180 et seq.

7 See the Admiralty and Commercial Courts Guide section N10.1. If both vessels are damaged and found partly to blame, two references, one in respect of the claim of the claimant and the other in respect of the claim of the defendant, may be necessary.

There is no hard and fast rule as to the dividing line between questions of liability and questions of damages; accordingly such questions as to whether certain consequential loss was or was not caused by the act of the defendant may either be determined by the court or included in the reference to the Registrar: see *The Maid of Kent* (1881) 6 PD 178; *The Guildford* as reported in [1956] 2 All ER 915 at 917, [1956] 2 Lloyd's Rep 74 at 82 per Lord Merriman. See also *SS Singleton Abbey v SS Paludina* [1927] AC 16, HL; and *The Argonaftis* [1989] 2 Lloyd's Rep 487 (claimants obtained judgment on liability for collision damage; issue as to the amount of damages which they were entitled to recover was referred to the Admiralty Registrar). Which of these courses is to be adopted may be decided at the case management conference: see *The Guildford*. As to the case management conference see PARA 204.

The Admiralty and Commercial Courts Guide provides additional guidance about the conduct of proceedings in the Admiralty and Commercial Courts and, within the framework of the Civil Procedure Rules and the associated Practice Directions, establishes the practice to be followed in those courts: see para A1.2; and PARA 157 et seq.

8 See *The Maid of Kent* (1881) 6 PD 178 (questions of remoteness and contributory negligence); *Carlsholm v Calliope*, *The Calliope* [1970] P 172, [1970] 1 All ER 624, [1970] 1 Lloyd's Rep 84. In *The Guildford* [1956] 2 All ER 915, [1956] 2 Lloyd's Rep 74 and *The Lucile Bloomfield* [1967] 2 Lloyd's Rep 308 the matter was dealt with at trial rather than by reference. If the parties desire that such matters be decided by the judge, this should be raised at the case management conference.

9 *The Dwina* [1892] P 58. As to the extent of Admiralty jurisdiction regarding salvage claims see PARA 113 et seq.

10 Generally where the Admiralty Court refers an account, inquiry or enforcement, it will usually refer the matter to the Admiralty Registrar: see the Admiralty and Commercial Courts Guide section N10.2.

11 *Wilkinson v Liverpool and Glasgow Salvage Association*, *The Fremantle* [1954] 2 Lloyd's Rep 20; and see *Mortiboys v Skinner*, *The Devonshire Maid* [1952] 2 Lloyd's Rep 95 (loss of life, personal injuries in a collision); *The St Chad (No 2)* [1962] 2 Lloyd's Rep 347 (assessment of damages against employers). See also *The Medina* (1876) 1 PD 272 (inequitable agreement regarding award for life salvage).

12 As to limitation claims see PARA 194 et seq.

13 As to the distribution of the limitation fund see PARA 201.

14 *The Nicolaou Georgios* [1952] 2 Lloyd's Rep 215.

15 As to the role of assessors generally see PARA 205.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

143 References to the Admiralty Registrar

NOTE 7--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para N10.1.

NOTE 10--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para N10.2.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(i) The Admiralty Registrar/B. REFERENCES TO THE REGISTRAR/144. Filing of claim on a reference and of a defence to the claim.

144. Filing of claim on a reference and of a defence to the claim.

Where a reference to the Admiralty Registrar¹ has been ordered², unless the court³ orders otherwise:

- 276 (1) the claimant must (if particulars of claim have not already been served) file and serve particulars of claim on all other parties within 14 days after the date of the order⁴; and
- 277 (2) any party opposing the claim must file a defence to the claim within 14 days after service of the particulars of claim on him⁵.

1 As to the Admiralty Registrar see PARA 140.

2 As to references made to the Admiralty Registrar see PARA 143.

3 Ie the Admiralty Court: see PARA 91 note 3.

4 *Practice Direction--Admiralty Claims* PD 61 para 13.2. As to the filing of documents with the Admiralty and Commercial Court Registry see PARA 142.

As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 157 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3).

5 *Practice Direction--Admiralty Claims* PD 61 para 13.2.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(i) The Admiralty Registrar/B. REFERENCES TO THE REGISTRAR/145. Requirement for case management conference on a reference.

145. Requirement for case management conference on a reference.

Where a reference to the Admiralty Registrar¹ has been ordered², within seven days of the filing of the defence³, the claimant must apply for an appointment before the Registrar for a case management conference⁴.

1 As to the Admiralty Registrar see PARA 140.

2 As to references made to the Admiralty Registrar see PARA 143.

3 See PARA 144.

4 *Practice Direction--Admiralty Claims* PD 61 para 13.3. As to the case management conference generally see PARA 204. Where necessary, disclosure will be ordered, to be complied with before the hearing of the reference: see *The Pacuare* [1912] P 179, CA (in a total loss claimant required to produce his books with a view to ascertaining the value of the lost vessel).

As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 157 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(i) The Admiralty Registrar/B. REFERENCES TO THE REGISTRAR/146. Evidence and interim matters.

146. Evidence and interim matters.

The practice and procedure of the Commercial Court¹ should, except where inapplicable, be followed in Admiralty proceedings, subject to any Admiralty practice direction and to any order that may be made in an individual case².

The ordinary rules of evidence apply on the hearing of a reference but are frequently in practice, by agreement between the parties, relaxed in order to save time and expense³.

In practice, if any question of seamanship or nautical skill is likely to arise at the reference, a nautical assessor will usually attend⁴.

1 As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. See also note 2.

2 As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 157 et seq. CPR Pt 58 (Commercial Court) (see note 1) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3).

3 As to evidence for a hearing in the Admiralty and Commercial Courts see generally the Admiralty and Commercial Courts Guide Pt H (paras H1-H4); and as to conduct of the hearing itself see generally Pt J (paras J1-J13). See also PARA 204.

The Admiralty and Commercial Courts Guide provides additional guidance about the conduct of proceedings in the Admiralty and Commercial Courts and, within the framework of the Civil Procedure Rules and the associated Practice Directions, establishes the practice to be followed in those courts: see para A1.2; and PARA 157 et seq.

4 As to nautical assessors see PARA 205.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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146 Evidence and interim matters

NOTE 3--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) Pt H (paras H1-H4) and Pt J (paras J1-J13).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(i) The Admiralty Registrar/B. REFERENCES TO THE REGISTRAR/147. Hearing of reference and decision.

147. Hearing of reference and decision.

The hearing of a reference made to the Admiralty Registrar¹ proceeds in open court. The Admiralty Registrar, when sitting with merchants and nautical assessors², who are assumed to have wide experience in maritime matters, is not bound to accept the evidence of expert witnesses even though the evidence is all one way³. Where the decision is as to damages, it shows in a schedule in parallel columns the items claimed and those allowed, and from what period and at what rate interest will run⁴.

The Admiralty Registrar's decision will be in writing. The Admiralty Registrar may refer a matter to a judge for decision, either on any particular point arising in the course of the proceedings at the reference, or as to questions involved in the reference generally⁵. The judge may either dispose of the matter or refer it back to the Admiralty Registrar with such directions as he thinks fit⁶.

1 As to the Admiralty Registrar see PARA 140; and as to references made to the Admiralty Registrar see PARA 143.

2 As to nautical assessors see PARA 205.

3 *The Steadfast* (1922) 39 TLR 96. Merchants are not usually in practice called upon; cf the position as respects nautical assessors: see PARAS 143, 205.

4 As to interest on damages see *The Joannis Vatis (No 2)* [1922] P 213; *The Aizkarai Mendi* [1938] P 263, [1938] 3 All ER 483, 61 Ll L Rep 274 (life claims); *The Napier Star* [1933] P 136, 45 Ll L Rep 139 (future repairs); *The Kong Magnus* [1891] P 223 (payment despite considerable lapse of time); *The Crispin* (1929) 35 Ll L Rep 197, CA (Registrar's discretion to disallow interest where undue delay); *The Berwickshire* [1950] P 204, [1950] 1 All ER 699 (delay due to war); *The Nassau* [1965] 1 Lloyd's Rep 236 (delay in bringing action to trial); see also *Jefford v Gee* [1970] 2 QB 130, [1970] 1 All ER 1202, [1970] 1 Lloyd's Rep 107, CA (consideration generally of interest in personal injury and Fatal Accidents Act cases; modified by the Court of Appeal in *Birkett v Hayes* [1982] 2 All ER 710, [1982] 1 WLR 816, CA); *The Funabashi* [1972] 2 All ER 181, [1972] 1 WLR 666, [1972] 1 Lloyd's Rep 371 (decision in *Jefford v Gee* applicable to limitation fund cases).

5 See *Practice Direction--Applications* PD 23A para 1; **CIVIL PROCEDURE**; and PARA 141. See also *The John Bellamy* (1870) LR 3 A & E 129; *The Parisian* (1887) 13 PD 16; *The Immacolata Concezione* (1883) 9 PD 37.

6 See *Practice Direction--Applications* PD 23A para 1; **CIVIL PROCEDURE**; and PARA 141.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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148. Costs.

On a reference made to the Admiralty Registrar¹, the Registrar himself may decide whether any (and what part) of the costs are payable by one party to another, the amount of those costs, and when they are to be paid, the allowance or disallowance of these costs being wholly discretionary². Such costs do not depend in any way on how the costs of the claim are to be borne, but are in the discretion of the court as the costs of a new litigation³.

Each instance is decided on its own merits⁴. Usually, the claimant will be awarded his costs of the reference if he recovers the major part of the sum claimed; however, where an offer has been made and the amount awarded in the reference is less, the party making the offer will usually be entitled to his costs after the date of the offer⁵.

In relation to the costs of reference in a limitation claim⁶, normally the limiting party pays the claimants' costs of proving their claims and investigating the claims of other parties interested in the limitation fund⁷ where this results in reducing the costs of the reference, but not where excessive claims have been submitted⁸.

Where claimants against a limitation fund dispute issues between them, the costs of such issues will normally be awarded as between them and follow the event rather than being ordered to be paid by the limiting party⁹.

¹ As to the Admiralty Registrar see PARA 140; and as to references made to the Admiralty Registrar see PARA 143.

² See the Supreme Court Act 1981 s 51; CPR 44.3; and **CIVIL PROCEDURE** vol 12 (2009) PARAS 1732, 1738. See *Aiden Shipping Ltd v Interbulk Ltd* [1986] AC 965, [1986] 2 All ER 409, HL (width of court's discretionary powers).

³ *The Consett* (1880) 5 PD 77, CA; *The Friedeberg* (1885) 10 PD 112, CA. Where two vessels are held to blame in a collision claim, the costs in the reference of each claimant are dealt with on the basis of the reference being a separate proceeding from the claim: see *The Consett*. As to failure to give notice of survey see *The Solace (No 2)* (1936) 55 Ll L Rep 201. As to collision claims see PARA 180 et seq.

⁴ As to the principles to be applied in relation to costs see CPR 44.3; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1739.

⁵ See CPR Pt 36; and **CIVIL PROCEDURE** vol 11 (2009) PARA 729 et seq.

⁶ As to limitation claims see PARA 194 et seq.

⁷ As to the limitation fund see PARA 196.

⁸ *The Rijnstroom* (1899) 8 Asp MLC 538.

⁹ *The Empusa* (1879) 5 PD 6; *African Steam Navigation Co v Swanzy* (1856) 25 LJ Ch 870; *The Expert* (1877) 3 Asp MLC 381; *The Empusa* (1879) 4 Asp MLC 185.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(i) The Admiralty Registrar/B. REFERENCES TO THE REGISTRAR/149. Appeal against the Admiralty Registrar's decision on the reference.

149. Appeal against the Admiralty Registrar's decision on the reference.

In accordance with the usual rules on appeals, the court, in an appeal against a decision of the Admiralty Registrar on a reference made to him¹, has power to order that it receives evidence which was not before the Admiralty Registrar and may draw any inference of fact which it considers justified on any of the evidence before it². No objection may be taken on the appeal to any item which was not contested at the reference³.

The court attaches great weight to the experience of the Admiralty Registrar and will not interfere with the decision on a question of quantum unless there is an error of principle, or an obvious mistake in calculation, or a clear misunderstanding of evidence on a material point⁴.

1 As to the Admiralty Registrar see PARA 140; and as to references made to the Admiralty Registrar see PARA 143. For examples of an appeal from a reference see *The Gilbert Rowe* [1997] 2 Lloyd's Rep 218; and see *The Kumanovo and Massira* [1998] 2 Lloyd's Rep 301 (cited in note 4).

2 See CPR 52.11(2), (4); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1676. Additional evidence may be allowed if the judge is satisfied that the evidence could not reasonably have been produced at the reference by proper diligence and application: see *The Flying Fish* (1865) 3 Moo PCCNS 77; *The Thuringia* (1871) 41 LJ Adm 20, 1 Asp MLC 166.

3 *The Princess Helena* (1861) Lush 190. See also CPR 52.11(5); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1676.

4 *The Amerika* [1914] P 167, CA (affd sub nom *Admiralty Comrs v SS Amerika* [1917] AC 38, HL); *The Apsleyhall* (1924) 19 Ll L Rep 227, CA; *The St Charles* (1927) 138 LT 456, CA; *The Queen Mary* [1950] P 240 at 245, [1950] 2 All ER 22 at 24, 83 Ll L Rep 415 at 421 per Hodson J (life claims). See also *The Steadfast* (1922) 39 TLR 96 (where the court refused to interfere, even though the report of the Registrar was at variance with the evidence); *The Aizkarai Mendi* [1938] P 263, [1938] 3 All ER 483 (life claims); and *The Kumanovo and Massira* [1998] 2 Lloyd's Rep 301 (the court would not lightly interfere with the decision of the Registrar where and to the extent that his decision properly depended upon his view of any witness whom he had seen examined and cross-examined).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(i) The Admiralty Registrar/B. REFERENCES TO THE REGISTRAR/150. Order on appeal.

150. Order on appeal.

Instead of merely allowing the appeal against a decision of the Admiralty Registrar on a reference made to him¹, or varying that decision, the court may refer the decision back to the Registrar and direct him to make a further decision, either on the case generally, or on any special point². It appears that the order made by the court on the objection application is a final decision and an appeal against the court's consideration of the reference lies to the Court of Appeal in the usual way³.

¹ As to the Admiralty Registrar see PARA 140; and as to references made to the Admiralty Registrar see PARA 143.

² See *Practice Direction--Applications* PD 23A para 1; **CIVIL PROCEDURE**; and PARA 141. See also *The Minnetonka* [1904] P 202 at 210 per Bucknill J; revsd on another point [1905] P 206, CA.

³ See *Practice Direction--Appeals* PD 52 para 2A.2; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1658. As to appeals from the High Court's consideration of the Registrar's decision on a reference see PARA 218 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(ii) Limitation of Time for Admiralty Claims/151. Claims in rem generally.

(ii) Limitation of Time for Admiralty Claims

151. Claims in rem generally.

The general restrictions limiting the time within which claims founded on contract or on tort must be brought¹ apply to any cause of action within the Admiralty jurisdiction of the High Court² as they apply to any other cause of action³. A special statutory restriction applies, however, in respect of certain causes of action enforceable in rem⁴.

1 See the Limitation Act 1980 s 2 (tort) (cited in **LIMITATION PERIODS**), s 5 (contract) (cited in **LIMITATION PERIODS**).

2 As to the practice of the High Court when exercising its Admiralty jurisdiction see PARA 158 et seq.

3 See **LIMITATION PERIODS**.

4 See the Merchant Shipping Act 1995 s 190 (time limit for proceedings against owners of ships) (cited in PARAS 152, 1063); and the Carriage of Goods by Sea Act 1971 (cited in PARA 156), which applies the Hague-Visby Rules (as to which see **CARRIAGE AND CARRIERS**). As to claims in rem see PARA 158 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(ii) Limitation of Time for Admiralty Claims/152. Claims against owners or ship for damage, loss, personal injury or death.

152. Claims against owners or ship for damage, loss, personal injury or death.

No proceedings may be brought¹ to enforce any claim² or lien against a ship³ or its owners⁴ in respect of any damage or loss caused by the fault⁵ of that ship to another ship, its cargo or freight, or any property on board it, or damages for loss of life or personal injuries suffered by any person on board it other than passengers⁶, the extent of fault being immaterial⁷, unless brought within two years⁸ of the date when the damage or loss was caused or the loss of life or injury was suffered⁹. This provision applies to proceedings against a sister ship¹⁰. The Crown is bound by these provisions, which apply to Her Majesty's ships¹¹ as to other ships¹².

Any claim for damages arising out of the death of, or personal injury to, a passenger or for the loss of, or damage to, luggage is time-barred after a period of two years from, in the case of personal injury, the date when disembarkation took place or ought to have taken place, or if death occurred after that date, from the date of death, provided the period does not exceed three years from the disembarkation¹³. The law of the court seized of the case governs the grounds of suspension and interruption of limitation periods; but the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen provided the declaration or agreement is in writing¹⁴.

1 The protection afforded by statute is not waived by acknowledging service of a claim form: see *The Llandovery Castle* [1920] P 119; *The Alnwick* [1965] P 357, [1965] 2 All ER 569, [1965] 1 Lloyd's Rep 320, CA. See note 9.

2 The limitation applies to counterclaims and cross-claims: *The Fairplay XIV* [1939] P 57, 65 Ll L Rep 108. See also *The Gniezno* [1968] P 418, [1967] 2 All ER 738, [1967] 1 Lloyd's Rep 441. A decree of limitation of liability does not override the two year period and rival claimants are therefore entitled to object to claims of persons who have not commenced proceedings within the statutory period, but, where limitation decrees are made, this may be a good reason for not issuing a claim form, so that in general an extension of time will be granted: see *The Disperser* [1920] P 228 at 235, 15 Asp MLC 112 at 114 per Hill J. See note 9. As to the court's discretion to extend the time see PARA 153.

3 As to the meaning of 'ship' for these purposes see PARA 229. This includes hovercraft: see the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 7 (and see note 9). In *Steedman v Schofield* [1992] 2 Lloyd's Rep 163, a claim for damages against the operator of a jet ski was held not to be time-barred by the Maritime Conventions Act 1911 s 8 (repealed) (see now the Merchant Shipping Act 1995 s 190; but see note 9). This case would probably be decided similarly under the Merchant Shipping Act 1995 s 190 (see PARA 1063).

4 For this purpose, 'owners' includes any person responsible for the fault of the vessel, and charterers are to be substituted for owners where the owners are not responsible for navigation and management: see *HMS Archer* [1919] P 1; *The Sobieski* [1949] P 313, [1949] 1 All ER 701, CA. See note 9.

5 'Fault' includes fault in the management of the ship: *John Franetovich & Co v Ministry of Defence, The Norwhale* [1975] QB 589, [1975] 1 Lloyd's Rep 610. See note 9.

6 Passenger claims will be governed by the Convention relating to the Carriage of Passengers and their Luggage by Sea (Athens, 13 December 1974; TS 40 (1987); Cm 202) (the 'Athens Convention') art 16: see the text and note 13.

7 These words apply only to claims in respect of damage or loss to cargo or property, or loss of life or personal injury, arising on board a ship which lie against another ship. Claims which arise on board a ship and which lie against owners of that ship, are not affected by this provision as to limitation: *The Niceto de Larringa* [1966] P 80, [1965] 2 All ER 930. See note 9.

8 The Merchant Shipping Act 1995 is complied with if the claim form is issued within two years, even though it is not served: see *The Espanoleto* [1920] P 223, 15 Asp MLC 287. See note 9.

9 See the Merchant Shipping Act 1995 s 190(1)-(3); and PARA 1063. This section is derived from the Maritime Conventions Act 1911 s 8 (repealed), although there are significant differences. In particular, the earlier provision did not specify that the extent of fault was immaterial. The cases cited in notes 1-8, which were all based on the Maritime Conventions Act 1911 s 8 (repealed) should, therefore, be treated with some caution when interpreting provisions of the Merchant Shipping Act 1995 s 190.

10 See *The Preveze* [1973] 1 Lloyd's Rep 202 (which considered the Administration of Justice Act 1956: see now the Supreme Court Act 1981 ss 20, 21(4) (see PARA 93)).

11 As to the meaning of 'Her Majesty's ships' see the Crown Proceedings Act 1947 s 38(2); and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 103.

12 See the Merchant Shipping Act 1995 s 192; and PARA 1065.

13 See the Athens Convention art 16 (as to which see **CARRIAGE AND CARRIERS**) given the force of law by the Merchant Shipping Act 1995 s 183(1), Sch 6 Pt I. This article applies to arbitral proceedings as it applies to a claim: see s 183(2), Sch 6 Pt II para 7; and **CARRIAGE AND CARRIERS**. These provisions are not affected by the Limitation Act 1980 s 33 (discretionary exclusion of time limit for claims in respect of personal injury or death) (see **LIMITATION PERIODS**; and *Higham v Stena Sealink Ltd* [1996] 3 All ER 660, [1996] 1 WLR 1107, CA).

14 See note 13.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(ii) Limitation of Time for Admiralty Claims/153. Extension of period for claims against owners or ship.

153. Extension of period for claims against owners or ship.

Any court having jurisdiction to deal with proceedings to enforce a claim or lien against a ship¹ or its owners for damage, loss, personal injury or death² may extend the period of limitation that applies, in accordance with rules of court³, to such extent and on such conditions as it thinks fit⁴. If satisfied that there has not within the period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the claimant's ship belongs or in which the claimant resides or has his principal place of business, the court is bound to extend the period so as to give such reasonable opportunity⁵.

1 As to the meaning of 'ship' for these purposes see PARA 229. This includes hovercraft: see PARA 152 note 3.

2 See PARA 152.

3 Although no rules have been made under the Merchant Shipping Act 1995 s 190 (see PARAS 152, 1063), it is thought that the court's discretion is not thereby affected. This was the position under the Maritime Conventions Act 1911 (repealed): see *HMS Archer* [1919] P 1.

4 See the Merchant Shipping Act 1995 s 190(5); and PARA 1063. In an application for an extension of time there is a two stage test: the court must first consider the question of fact as to whether good reason for the extension has been demonstrated by the claimants and only if the claimant has established good reason should the court proceed to exercise its discretion, taking into account the balance of hardship, as to whether such an extension should be granted: *The Al Tabith and The Alanfushi* [1995] 2 Lloyd's Rep 336, CA (distinguishing *The Zirje* [1989] 1 Lloyd's Rep 493). Mere oversight on the part of the claimant in failing to protect the time limit was not a good reason: *The Al Tabith and The Alanfushi*. There is much case law under the Maritime Conventions Act 1911 (repealed) as to how the discretion is to be exercised but these decisions all need now to be considered in light of the two stage test in *The Al Tabith and The Alanfushi*. See also PARA 152 note 9. The exercise of the discretion ought not to be interfered with except on substantial grounds: *The Arraiz* (1924) 132 LT 715, 16 Asp MLC 451, CA. The claim will be allowed to proceed if satisfactory grounds are shown for the delay (*The Cambric* [1912] WN 272), but the party who wishes to have time extended must show substantial reasons why the other party should be deprived of the right to limitation of action which the law gives (see *The Kashmir* [1923] P 85 at 89, 16 Asp MLC 81 at 83, CA). The discretion has been exercised where the claimant was induced by correspondence with the defendants' solicitors to delay whilst awaiting settlement of liability in the collision action arising from the same incident: *The Vadne* [1959] 2 Lloyd's Rep 480. In the exercise of its discretion, the court has allowed a statement of claim in a salvage action to be amended to include allegations of further services arising out of the same occurrence: *The Katcher I* [1969] P 65, [1968] 3 All ER 344, [1968] 2 Lloyd's Rep 232. As to the exercise of discretion see also *The Alnwick* [1965] P 357, [1965] 2 All ER 569, [1965] 1 Lloyd's Rep 320, CA; *The Disperser* [1920] P 228, 15 Asp MLC 112. Applications for an extension have been dismissed where the delay was due to difficulty in ascertaining the amount of the claim (*The James Westoll* [1923] P 94n, 16 Asp MLC 453n, CA), where agreement had been reached on liability but there was no binding agreement to waive the time limit and there was undue delay (*The Sauria and The Trent* [1957] 1 Lloyd's Rep 396, CA), where the claimant was ignorant that she had a claim (*The Kashmir*), where a deliberate decision was taken not to start proceedings (*The Lu Shan* [1991] 2 Lloyd's Rep 386), where unsuccessful proceedings were first taken against another ship (*The PLM 8* [1920] P 236, 15 Asp MLC 51), where the institution of proceedings was postponed while diplomatic representations were made (*HMS Archer* [1919] P 1), where owners elected not to sue in the United Kingdom and let time run out (*The Nedenes* (1925) 23 Ll L Rep 57), where the matter had been allowed to go to sleep and any claim by the defendant against third parties was also statute barred (*The Hesselmoor*, *The Sergeant* [1951] 1 Lloyd's Rep 146) and where proceedings were not allowed to run while the parties were in negotiations (see *The Albany and The Marie Josaine* [1983] 2 Lloyd's Rep 195; and see *The Mouna* [1991] 2 Lloyd's Rep 221, CA).

5 See the Merchant Shipping Act 1995 s 190(6); and PARA 1063. The test of whether there has been any reasonable opportunity to arrest a vessel is to be determined objectively, without regard to whether steps have actually been taken in an attempt to arrest in a particular jurisdiction: *Santos v Owners of the Baltic Carrier*

[2001] 1 Lloyd's Rep 689. A period of ten days during which a ship is under requisition has been held not to constitute reasonable opportunity: *The Largo Law* (1920) 123 LT 560. The Merchant Shipping Act 1995 s 190 has no application to cases in which the defendant vessel is permanently immune from arrest: see *HMS Archer* [1919] P 1.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(ii) Limitation of Time for Admiralty Claims/154. Claims under the Salvage Convention 1989.

154. Claims under the Salvage Convention 1989.

Any claim relating to payment under the International Convention on Salvage¹ is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years, the limitation period commencing on the day on which the salvage operations are terminated². The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant and this period may in the like manner be further extended³. A claim for indemnity by a person liable may be instituted even after the expiration of the limitation period so provided, if brought within the time allowed by the law of the state where proceedings are instituted⁴.

1 See the International Convention on Salvage (London, 28 April 1989; Misc 8 (1991); Cm 1526); the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I; and PARA 891 et seq. As to salvage see also PARA 115 et seq.

2 See the International Convention on Salvage art 23(1); and PARA 914. Article 23 suggests that the date the final salvage service was performed will be the relevant date from which the time limit will be calculable.

3 See the International Convention on Salvage art 23(2); and PARA 914. The extension of the time limit under art 23(2) is only available where a declaration is made to the salvor; the court has no discretion to extend the time limit.

4 See the International Convention on Salvage art 23(3); and PARA 914. The test as to when proceedings have been commenced is determined according to the lex fori: see *Dresser UK Ltd v Falcongate Freight Management Ltd* [1992] QB 502, [1992] 2 All ER 450, CA; and PARA 99. As to the lex fori see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 11.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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155. Claims for liability in respect of oil pollution.

No proceedings to enforce a claim in respect of a liability for oil pollution¹ may be entertained by any court in the United Kingdom² unless the proceedings are commenced not later than three years after the claim arose or, in cases where the damage occurs after the incident, not later than six years after the occurrence or first of the occurrences resulting in the discharge or escape³, or, as the case may be, in the relevant threat of contamination⁴, by reason of which the liability was incurred⁵.

No proceedings to enforce a claim against the International Fund established by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage⁶ may be entertained by a court in the United Kingdom unless the proceedings are commenced or a third party notice⁷ of proceedings to enforce a claim against the owner or his guarantor in respect of same damage is given to the fund, not later than three years after the damage occurred⁸. In cases where the damage occurs after an incident takes place the claim must be brought within six years of the occurrence or first of the occurrences resulting in the discharge or escape, or, as the case may be, in the relevant threat of contamination, by reason of which the claim against the fund arose⁹. These provisions apply (with appropriate modification) in relation to claims against the Supplementary Fund as they apply in relation to claims against the International Fund¹⁰.

¹ I.e. under the Merchant Shipping Act 1995 ss 153-154 (as to which see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 443-444); see s 162.

² As to the meaning of 'United Kingdom' see PARA 17 note 3.

³ As to the meanings of 'discharge' and 'escape' for these purposes see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 443 NOTE 2.

⁴ As to the meaning of 'contamination' for these purposes see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 443.

⁵ See the Merchant Shipping Act 1995 s 162; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 452.

⁶ I.e. the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Brussels, 18 December 1971; TS 95 (1978); Cmnd 7383). The text refers to the International Fund: see the Merchant Shipping Act 1995 Pt VI Ch IV (ss 172-182); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 459 et seq.

⁷ As to the meaning of 'third party notice' for these purposes see the Merchant Shipping Act 1995 s 177(2), (3); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 468. Third party notices have been replaced by additional claims: see CPR Pt 20; and **CIVIL PROCEDURE**.

⁸ See the Merchant Shipping Act 1995 s 178(1); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 469. For the purposes of s 177 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 468), any party to a claim against an owner or guarantor in respect of liability under s 153 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 443) may give the fund notice of the proceedings by that person serving a notice in writing on the fund together with a copy of the claim form and copies of the statements of case (if any) served in the claim: see *Practice Direction--Admiralty Claims* PD 61 para 11.1; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 459 et seq. Notice given to the Fund under para 11.1 is deemed to have been given to the supplementary fund: see *Practice Direction--Admiralty Claims* PD 61 para 11.2; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 459 et seq. The fund (or supplementary fund)

may intervene in any claim to which para 11.1 applies, whether or not served with the notice, by serving notice of intervention on the owner, guarantor and the court: see *Practice Direction--Admiralty Claims* PD 61 para 11.3; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 459 et seq. Where a judgment is given against the fund in any claim under the Merchant Shipping Act 1995 s 175 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 464) or against the supplementary fund in any claim under s 176A (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 466), the Admiralty Registrar will arrange for a stamped copy of the judgment to be sent to the fund (or supplementary fund) by post: see *Practice Direction--Admiralty Claims* PD 61 para 11.4; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 459 et seq. Notice by the fund (or supplementary fund) to the Admiralty Registrar of the matters set out in the Merchant Shipping Act 1995 s 176(3)(b) in any claim under s 175 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 464) and the corresponding provision of s 176B(2)(b) in any claim under s 176A (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 466) must be in writing and sent to the court: see *Practice Direction--Admiralty Claims* PD 61 para 11.4; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 459 et seq. As to the Admiralty Registrar see PARA 140.

9 See the Merchant Shipping Act 1995 s 178(2); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 469.

10 See the Merchant Shipping Act 1995 s 178(3), (4); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 469. As to the Supplementary Fund see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 466-467.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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156. Claims on contracts for carriage of goods.

In the case of contracts for the carriage of goods by sea to which the Hague Rules or the Hague-Visby Rules apply¹, the carrier and the ship are discharged from all liability in respect of loss or damage unless suit is brought² within one year³ after delivery of the goods or the date when the goods should have been delivered⁴.

1 The Hague Rules were set out in the Schedule to the Carriage of Goods by Sea Act 1924 (repealed). For the Hague-Visby Rules see the Carriage of Goods by Sea Act 1971 s 1(2), Schedule; and **CARRIAGE AND CARRIERS**.

2 It has been held that the words 'suit is brought' in this context include the commencement of arbitration proceedings: see *The Merak* [1965] P 223 at 261, [1965] 1 All ER 230 at 240, CA, per Russell LJ. The words refer to the bringing of the suit in the proceedings before the court and not the bringing of some other proceedings before a court in another jurisdiction: see *Compagnia Colombiana de Seguros v Pacific Steam Navigation Co* [1965] 1 QB 101, [1964] 1 All ER 216, where other proceedings had been brought in New York within time but by the wrong party; see also Parker LJ's comments on this decision in *Hispanica de Petroleos SA v Vencedora Oceanica Navegacion SA, The Kapetan Markos* [1986] 1 Lloyd's Rep 211 at 231, CA, per Parker LJ; and *The Nordglimt* [1988] 1 QB 183, [1988] 2 All ER 531, [1987] 2 Lloyd's Rep 470 (since overruled on other grounds by the House of Lords in *Republic of India v India Steamship Co Ltd (No 2)* [1998] AC 878, [1997] 4 All ER 380, HL). If the claimants have no title to sue at the date of bringing the proceedings, the defect cannot be cured by assignment of title to them after the time limit has expired: see *Associated Herring Merchants v Reitsma* 1958 SLT 57, Sh Ct.

3 Under an agreement known as the Gold Clause Agreement, entered into between British shipowners and underwriters, the year's time limit under the Carriage of Goods by Sea Act 1924 was in practice generally extended to two years. This agreement continues to be effective under the Carriage of Goods by Sea Act 1971: see **CARRIAGE AND CARRIERS**.

4 See the Hague-Visby Rules; the Carriage of Goods by Sea Act 1971 s 1(2), Schedule art III para 6; and **CARRIAGE AND CARRIERS**. An extension to the period of one year may be authorised if the parties so agree after the cause of action has arisen: see Schedule art III para 6; and **CARRIAGE AND CARRIERS**. It has been held by the United States District Court that 'delivery of the goods' is not synonymous with discharge: see *American Hoesch Inc and Riblet Products Inc v SS Aubade etc and Maritime Commercial Corp Inc* [1971] 2 Lloyd's Rep 423. The rule does not bar defences: see *Goulandris Bros Ltd v B Goldman & Sons Ltd* [1958] 1 QB 74, [1957] 3 All ER 100, where a cargo owner's defence to a shipowner's claim for a general average contribution, on the ground that the ship was unseaworthy or that the shipowner did not exercise due diligence to make her seaworthy, was held not to be barred.

An action for indemnity against a third person may be brought even after the expiration of the year provided for in the Carriage of Goods by Sea Act 1971 Schedule art III para 6 if brought within the time allowed by the law of the court seized of the case and so long as the time allowed is not less than three months (commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself): see Schedule art III para 6bis; and **CARRIAGE AND CARRIERS**.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any

enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(iii) Admiralty Claims except Limitation Claims/A. IN GENERAL/157. Outline of procedure in Admiralty claims.

(iii) Admiralty Claims except Limitation Claims

A. IN GENERAL

157. Outline of procedure in Admiralty claims.

Proceedings in the Admiralty Court are governed by the Civil Procedure Rules ('CPR') and Practice Directions¹. The specific procedure that applies for the purposes of making an Admiralty claim differs according to the specific nature of the claim, as follows: (1) a claim in personam (an 'other claim') commences and proceeds under the CPR as if it were a claim proceeding in the Commercial List²; (2) a claim in rem proceeds differently from other claims in its early stages³; (3) subject to the preparation of a collision statement of case⁴, a collision claim commenced in rem proceeds generally as under head (2) above⁵ but where a collision claim is not commenced in rem it proceeds generally as under head (1) above⁶.

The procedure governing the early stages of a limitation claim differs significantly from the analogous stages of other claims⁷.

¹ As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

The Admiralty and Commercial Courts Guide has been prepared in consultation with the Admiralty judge and has been adopted to provide guidance about the conduct of proceedings in the Admiralty Court: see paras A1.2, A1.4, N1.2. The Guide must be followed in the Admiralty Court unless the content of CPR Pt 61, its associated practice direction, or the terms of the Admiralty and Commercial Courts Guide paras N1-N14 require otherwise: see paras A1.1, A1.7, N1.2. As to the Admiralty and Commercial Courts Guide see PARA 91 note 3.

² In accordance with CPR Pt 58 (as to which see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq): see the Admiralty and Commercial Courts Guide paras B1-B12, C1-C5, N3.1. *Practice Direction--Admiralty Claims* PD 61 para 12 ('other claims') applies to Admiralty claims which, before the coming into force of CPR Pt 61 (ie before 25 March 2002: see the Civil Procedure (Amendment No 5) Rules 2001, SI 2001/4015, r 1), would have been called claims in personam: see *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186 et seq.

³ See the Admiralty and Commercial Courts Guide para N4.1. The procedure is governed generally by CPR 61.3 and *Practice Direction--Admiralty Claims* PD 61 para 3.1-3.11 (as to which see PARA 158 et seq): see the Admiralty and Commercial Courts Guide paras N3.1, N4.1. As to the meaning of 'claim in rem' for these purposes see PARA 91 note 4.

⁴ As to which see PARA 182 et seq.

⁵ See the Admiralty and Commercial Courts Guide paras N3.1, N5.1. Accordingly, the procedure is governed generally by CPR 61.3 and *Practice Direction--Admiralty Claims* PD 61 paras 3.1-3.11 (as to which see PARA 158 et seq) but subject to CPR 61.4 and *Practice Direction--Admiralty Claims* PD 61 para 4.1-4.5 (as to which see PARA 182 et seq): see the Admiralty and Commercial Courts Guide paras N4.1, N5.1. As to the meaning of 'collision claim' for these purposes see PARA 91 note 12.

6 See the Admiralty and Commercial Courts Guide paras N3.1, N5.2. Accordingly, the procedure is governed generally by CPR Pt 58 (as to which see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq) but subject to CPR 61.4 and *Practice Direction--Admiralty Claims* PD 61 paras 4.1-4.5 (as to which see PARA 182 et seq): see the Admiralty and Commercial Courts Guide para N5.2.

7 See the Admiralty and Commercial Courts Guide paras N3.1, N6.1. The procedure is contained in CPR 61.11 and *Practice Direction--Admiralty Claims* PD 61 para 10.1 (as to which see PARA 194 et seq): see the Admiralty and Commercial Courts Guide para N6.1. As to the meaning of 'limitation claim' for these purposes see PARA 91 note 13.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

157 Outline of procedure in Admiralty claims

NOTE 1--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009).

NOTE 2--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) paras B1-B13, C1-5, N3.1.

NOTES 3-7--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(iii) Admiralty Claims except Limitation Claims/B. COMMENCEMENT OF CLAIMS/(A) Commencement of Claims in rem/(a) The in rem Claim Form/158. Issue and form of in rem claim form.

B. COMMENCEMENT OF CLAIMS

(A) COMMENCEMENT OF CLAIMS IN REM

(a) *The in rem Claim Form*

158. Issue and form of in rem claim form.

An Admiralty claim in rem¹ is started by the issue of an in rem claim form². The claimant in a claim in rem may be named or may be described (but if not named in the claim form must identify himself by name if requested to do so by any other party)³. The defendant must be described in the claim form⁴. As in other proceedings, the claim form must contain a concise statement of the nature of the claim and must specify the remedy sought by the claimant⁵. Applications made for any Admiralty claim, together with the requisite documents, may be posted to the Admiralty and Commercial Registry⁶.

The Admiralty Registrar⁷ must, after a claim form is issued, issue a direction in writing stating: (1) whether the claim should remain in the Admiralty Court or should be transferred to another court⁸; and (2) if the claim is to remain in the Admiralty Court, whether it should be dealt with by the Admiralty judge or by the Registrar, and whether the trial will be in London or elsewhere⁹.

Once a ship has been served with a claim form, or arrested in a claim in rem brought to enforce the claim being made, no other ship may be served with a claim form or arrested in that or any other claim in rem brought to enforce that claim¹⁰.

1 As to the origin of claims in rem see PARA 83; and as to the jurisdiction of the Admiralty Court in relation to claims in rem see PARA 92 et seq. As to the commencement of claims in personam see PARAS 186-188.

CPR 61.3 applies to an Admiralty claim in rem: see CPR 61.3(1) (CPR Pt 61 added by SI 2001/4015). As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 CPR 61.3(2) (as added: see note 1). The details concerning the issue of an in rem claim form are set out in *Practice Direction--Admiralty Claims* PD 61 para 3: see CPR 61.3(2) (as so added). A claim form in rem must be in Form ADM1 (Claim Form (Admiralty claim in rem)): see *Practice Direction--Admiralty Claims* PD 61 para 3.1. The procedure set out in the Admiralty and Commercial Courts Guide paras B3.3 (statement of value), B3.7-B3.11 (statement of truth, trial without service, interest, service when registry is closed), B6.4-B6.6 (applications for extension of time, certificate of service) applies to collision claims commenced in rem: see paras N4.2, N5.1. See also Apps 3, 4. As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1.

3 *Practice Direction--Admiralty Claims* PD 61 para 3.2.

4 *Practice Direction--Admiralty Claims* PD 61 para 3.3. If, after the issue of the form, a ship has been sold to a new owner, the new owner of the ship is a 'person interested' in the ship within the meaning of CPR 61.8(7) (as to which see PARA 169). In such circumstances, the correct procedure is for those who were the owners of the ship at the time when the claim form was issued to acknowledge service, and for the new owner to apply to be made a party to the claim under CPR 61.8(7). That rule, for example, provides the court with jurisdiction to allow a person who has no formal interest in property to be arrested to intervene if the arrest will cause serious hardship, difficulty or danger: see *The Mardina Merchant* [1974] 3 All ER 749, [1975] 1 WLR 147; *The Mawan now named Mara* [1988] 2 Lloyd's Rep 459.

In cases where the claimant contemplates a 'sister ship' claim (as to which see PARA 93), the claim form may, when issued, name not only the offending ship but also all the other ships which are at that time in the defendants' ownership: see the Supreme Court Act 1981 s 21(4), (8); and PARA 93. However, this provision does not give the claimants the right to arrest a ship which was a ship owned by a sister company of the owning company of the particular ship involved in the claim unless the claimants are able to prove that beneficial ownership of all the shares in it lies in the hands of the same defendant: see s 21(4)(ii) (cited in PARA 93); and *The Evpo Agnic* [1988] 3 All ER 810, [1988] 1 WLR 1090, CA; *The Nazym Khikmet* [1996] 2 Lloyd's Rep 362, CA. The claim form must subsequently be amended by the striking out of all the names except the one chosen for the service of the claim form: see the Supreme Court Act 1981 s 21(8) (which gives statutory effect to the ruling in *The Banco* [1971] P 137, [1971] 1 All ER 524, [1971] 1 Lloyd's Rep 49, CA) (cited in PARA 93); and see *The Nord Sea and Freccia del Nord* [1989] 1 Lloyd's Rep 388 at 391 per Sheen J. As to the further requirements to be complied with before a sister ship is arrested see PARA 161. For the conditions for the renewal of a claim form in a sister ship claim see *The Berny* [1979] QB 80, [1978] 1 All ER 1065, [1977] 2 Lloyd's Rep 533; *The Helene Roth* [1980] QB 273, [1980] 1 All ER 1078, [1980] 1 Lloyd's Rep 477.

5 See CPR 16.2; and **CIVIL PROCEDURE** vol 11 (2009) PARA 585. As to service see PARA 160.

Subject to CPR 61.4 (special provisions relating to collision claims) (see PARA 181 et seq), the particulars of claim must be contained in or served with the claim form or be served on the defendant by the claimant within 75 days after service of the claim form: CPR 61.3(3) (as added: see note 1). It is important that the defendant is made aware from the claim form itself on whose behalf it has been issued, in respect of what claim, and that the incident giving rise to the claim is identified: see *The Tuyuti* [1984] 2 Lloyd's Rep 51 at 52-53 per Sheen J; *The Jangmi* [1988] 2 Lloyd's Rep 462. In the case of a collision claim, the claim form need not contain or be followed by particulars of claim and CPR 7.4 (particulars of claim generally) (as to which see **CIVIL PROCEDURE** vol 11 (2009) PARA 123) does not apply: see CPR 61.4(2); and PARA 181. As to the meaning of 'collision claim' see PARA 91 note 12.

6 As to the Admiralty and Commercial Registry and its functions see PARA 142.

7 As to the Admiralty Registrar see PARA 140.

8 *Practice Direction--Admiralty Claims* PD 61 para 2.1. In making these directions, the Admiralty Registrar must have regard both to the nature of the issues and the sums in dispute and the criteria set out in CPR 26.8 (ie the general rule for allocation) (see **CIVIL PROCEDURE** vol 11 (2009) PARA 270) in so far as they are applicable: *Practice Direction--Admiralty Claims* PD 61 para 2.2. As to case management in the Admiralty and Commercial Courts generally see PARA 204.

9 *Practice Direction--Admiralty Claims* PD 61 para 2.1. See note 8. Where the Admiralty Registrar directs that the claim should be dealt with by the Admiralty judge, case management directions will be given and any case management conference or pre-trial review will be heard by the Admiralty judge: *Practice Direction--Admiralty Claims* PD 61 para 2.3.

10 See the Supreme Court Act 1981 s 21(8); and PARA 93. However, when a ship has been arrested in the mistaken belief that it was a sister ship (as to which see note 4), another sister ship may be arrested, provided that the documentation in support of the second arrest refers to the previous mistaken arrest and the reasons for it: *The Stephan J* [1985] 2 Lloyd's Rep 344; *The Pioneer Container* [1989] HKLR 465.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

158 Issue and form of in rem claim form

NOTE 2--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) paras B4.3, B4.7-B4.10, B2.4, B7.4-B7.6, N4.2, N5.1 and Apps 3, 4.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(iii) Admiralty Claims except Limitation Claims/B. COMMENCEMENT OF CLAIMS/(A) Commencement of Claims in rem/(a) The in rem Claim Form/159. Right of owners of ship or cargo to sue as such.

159. Right of owners of ship or cargo to sue as such.

By the practice of the Admiralty Court¹, the owners of a ship or cargo may sue as such, and this practice is in no way affected by the enabling provisions in the Civil Procedure Rules relating to parties to claims in rem², or to the joining of parties to existing proceedings³. The claimants to a claim in rem if not named in the in rem claim form must identify themselves by name on the request of any other party⁴.

1 As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 See *Practice Direction--Admiralty Claims* PD 61 para 3.2 (cited in PARA 158); and *The Assunta* [1902] P 150.

3 As to the addition and substitution of parties, representative parties, and group litigation generally see CPR Pt 19; and **CIVIL PROCEDURE** vol 11 (2009) PARA 210 et seq. See also *The Maréchal Suchet* [1896] P 233; and *Marlborough Hill v Cowan & Sons* [1921] 1 AC 444, PC (where the owners of a number of parcels of cargo were joined as claimants on one claim).

4 See *Practice Direction--Admiralty Claims* PD 61 para 3.2 (cited in PARA 158). See also *The Whilelmine (Wilhelmine)* (1842) 1 Wm Rob 335 at 337; *The Euxine* (1871) LR 4 PC 8.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(iii) Admiralty Claims except Limitation Claims/B. COMMENCEMENT OF CLAIMS/(A) Commencement of Claims in rem/(a) The in rem Claim Form/160. Service of the in rem claim form.

160. Service of the in rem claim form.

The in rem claim form, which may be served by the claimant's solicitor or any person on his behalf, should be served as soon as possible after it has been issued¹. In practice, a convenient opportunity for service on property occurs at the same time as the Admiralty Marshal or substitute enters into possession under a warrant². An order for service by an alternative method is inappropriate to an in rem claim form³.

Service of a claim form in rem may be made in one of the following ways:

- 278 (1) on the property against which the claim in rem is brought by fixing a copy of the claim form on the outside of the property proceeded against in a position which may reasonably be expected to be seen⁴;
- 279 (2) if the property to be served is in the custody of a person who will not permit access to it, by leaving a copy of the claim form with that person⁵;
- 280 (3) where the property has been sold by the Marshal⁶, by filing the claim form at the court⁷;
- 281 (4) where there is a notice against arrest⁸, on the person named in the notice as being authorised to accept service⁹;
- 282 (5) on any solicitor authorised to accept service¹⁰;
- 283 (6) in accordance with any agreement providing for service of proceedings¹¹; or
- 284 (7) in any other manner as the court may direct as allowed for under the Civil Procedure Rules¹² provided that the property against which the claim is brought (or part of it) is within the jurisdiction of the court¹³.

Accordingly, unless it is served in one of the ways permitted by the Civil Procedure Rules¹⁴, or where the defendant acknowledges service of the claim form¹⁵, the form, or a copy of it, must be served on the property against which the claim is brought¹⁶, except where that property is freight or where that property has been sold by the Admiralty Marshal¹⁷.

In claims where the property is to be arrested, or in claims where the property is already under arrest in current proceedings, the Marshal will serve the in rem claim form if the claimant requests the court to do so¹⁸. In all other cases, in rem claim forms must be served by the claimant¹⁹.

Service of the claim form on a ship, freight or cargo is effected in one of the ways specified in the Civil Procedure Rules²⁰. Service of the claim form must be made within the jurisdiction²¹, in accordance with the practice direction²², and within 12 months after the date of issue²³. If the claim form is amended²⁴, which in a fit case may be done even after judgment²⁵, the amended claim form must be served in the same way as an original claim form²⁶.

Any person who pays the prescribed fee may, during office hours, search for, inspect and take a copy of any claim form in rem whether or not it has been served²⁷.

Where there has been default in acknowledgment of service, the time for judgment in the claim is 14 days from the date of the service of the claim form²⁸.

1 As to the issue and form of an in rem claim form see PARA 158. As to the service of in rem claim forms see the text and notes 2-26. In certain circumstances, the Admiralty Marshal will effect service of the in rem claim form and where he has so agreed an undertaking (usually given by a solicitor) to pay on demand all expenses incurred by the Admiralty Marshal or his substitute in respect of the service of the claim form will normally be required: see the text and notes 18-19; and as to undertakings see PARA 162.

CPR 61.3 applies to an Admiralty claim in rem: see CPR 61.3(1) (CPR Pt 61 added by SI 2001/4015). As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 As to arrested property see PARA 164.

3 *The Good Herald* [1987] 1 Lloyd's Rep 236. This is because the property against which the claim is issued cannot be arrested unless that property is within the jurisdiction and can be served with the claim: see CPR 6.8 (cited in **CIVIL PROCEDURE** vol 11 (2009) PARA 143) and its predecessor RSC Ord 65 r 4. It is not established whether CPR 6.9 (cited in **CIVIL PROCEDURE** vol 11 (2009) PARA 153), which allows the court to dispense with service altogether in appropriate cases, may be applied to in rem claim forms.

4 *Practice Direction--Admiralty Claims* PD 61 para 3.6(1)(a). Where the property is freight, service may be made either on the cargo in respect of which the freight was earned or on the ship upon which that cargo was carried: *Practice Direction--Admiralty Claims* PD 61 para 3.6(1)(b).

5 *Practice Direction--Admiralty Claims* PD 61 para 3.6(2).

6 As to sales by the Admiralty Marshal see PARA 178. For the purposes of CPR Pt 61, references to 'Marshal' mean the Admiralty Marshal: see CPR 61.1(2)(j) (as added: see note 1).

7 *Practice Direction--Admiralty Claims* PD 61 para 3.6(3). The claim form is deemed to have been duly served on the day on which the copy was filed. In this instance, part of the proceeds of sale must still be in court: *The Optima* (1905) 74 LJP 94; *The Fornjot* (1907) 24 TLR 26. As to the filing of claims with the Admiralty and Commercial Court Registry see PARA 142.

8 As to cautions against arrest see PARAS 166-167.

9 *Practice Direction--Admiralty Claims* PD 61 para 3.6(4).

10 *Practice Direction--Admiralty Claims* PD 61 para 3.6(5).

11 *Practice Direction--Admiralty Claims* PD 61 para 3.6(6).

12 Ie under CPR 6.8, by which the court may make an order permitting service by an alternative method (ie by a method not otherwise permitted by the Civil Procedure Rules) where it appears to the court that there is a good reason so to authorise (see **CIVIL PROCEDURE** vol 11 (2009) PARA 152): see *Practice Direction--Admiralty Claims* PD 61 para 3.6(7).

13 *Practice Direction--Admiralty Claims* PD 61 para 3.6(7). As to the jurisdiction of the court see PARA 85 et seq.

14 Ie by *Practice Direction--Admiralty Claims* PD 61 para 3.6 (see heads (1)-(7) in the text).

15 See CPR 61.3(6); and PARA 168. The protection afforded by the Maritime Conventions Act 1911 s 8 (repealed) (see now the Merchant Shipping Act 1995 s 190; and PARA 1063), restricting proceedings after the lapse of two years, is not waived by acknowledgment of service: see PARA 152. A defendant who files an acknowledgment of service to an in rem claim form does not by doing so lose any right that he may have to dispute the court's jurisdiction: *Practice Direction--Admiralty Claims* PD 61 para 3.11. As to acknowledgment of service in general see CPR 10.1 (cited in **CIVIL PROCEDURE** vol 11 (2009) PARA 184); and the Admiralty and Commercial Courts Guide para B8. As to the procedure for disputing the court's jurisdiction generally see CPR Pt 11 (cited in **CIVIL PROCEDURE** vol 11 (2009) PARA 206); and the Admiralty and Commercial Courts Guide para B9. As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1.

16 Where the claim is issued against two or more ships, it must be served on one only: *The Banco* [1971] P 137 at 145, [1971] 1 All ER 524 at 529, [1971] 1 Lloyd's Rep 49 at 50, CA, per Lane J. A change in ownership of

the defendant vessel subsequent to issue of the claim form is no bar to service thereof: see *The Monica S* [1968] P 741, [1967] 3 All ER 740 (but cf the reasoning of the majority of the Court of Appeal in *The Banco*). See also *The Helene Roth* [1980] QB 273, [1980] 1 All ER 1078, [1980] 1 Lloyd's Rep 477 (where a change in ownership of the defendant vessel was held to be no bar to renewal of the claim). If one ship is arrested in the mistaken belief that it is a sister ship, another ship may be arrested, provided that the affidavit in support of the application for the second arrest refers to the previous mistaken arrest and the reasons for it: *The Stephan J* [1985] 2 Lloyd's Rep 344.

17 See *Practice Direction--Admiralty Claims* PD 61 para 3.6 (see heads (1)-(7) in the text).

18 *Practice Direction--Admiralty Claims* PD 61 para 3.7.

19 *Practice Direction--Admiralty Claims* PD 61 para 3.8.

20 See *Practice Direction--Admiralty Claims* PD 61 para 3.6 (see heads (1)-(7) in the text).

21 Service must be made within the jurisdiction because the court will be seised of the in rem claim form from either the time the claim form is served, or from the time of the ship's arrest, whichever is earlier. The court cannot have in rem jurisdiction over a ship which does not come within the territorial waters of England and Wales: *The Nord Sea and Freccia del Nord* [1989] 1 Lloyd's Rep 388. As to the territorial jurisdiction of the Supreme Court see PARAS 187, 188.

The service of an in rem claim form upon property within the jurisdiction of the court is notice to all the world of the claim indorsed upon the claim form; hence the importance of complying with the proper mode of service: see *The Prins Bernhard* [1964] P 117 at 131, [1963] 3 All ER 735 at 745, [1963] 2 Lloyd's Rep 236 at 247 per Hewson J. Where, therefore, after the service of the claim form in rem, but before a warrant of arrest issued in the proceedings had been served, a foreign vessel proceeded against had left the jurisdiction without the owners appearing, on the action coming on for hearing as a default cause, the court ruled in favour of the claimants and awarded them their costs: *The Nautik* [1895] P 121. As to warrants of arrest see PARAS 161-165.

22 *le Practice Direction--Admiralty Claims* PD 61 para 3 (see note 1): see CPR 61.3(5) (as added: see note 1).

23 CPR 61.3(5) (as added: see note 1). CPR 7.5 (requirement for service of a claim form) (see **CIVIL PROCEDURE** vol 11 (2009) PARA 120) and CPR 7.6 (extension of time for serving a claim form) (see **CIVIL PROCEDURE** vol 11 (2009) PARA 121) are modified accordingly: see CPR 61.3(5) (as so added). As to the Civil Procedure Rules that allow the calculation of any period of time for doing any act which is specified by the rules, by a practice direction or by a judgment or order of the court see CPR 2.8, CPR 2.9; and **CIVIL PROCEDURE** vol 11 (2009) PARAS 88, 89.

24 *le* under CPR Pt 17 (see **CIVIL PROCEDURE** vol 11 (2009) PARAS 607-610).

25 *The Dictator* [1892] P 64.

26 *The Cassiopeia* (1879) 4 PD 188, CA. As to amendments made to statements of case with the court's permission see CPR 17.3(1); and **CIVIL PROCEDURE** vol 11 (2009) PARA 609.

27 *Practice Direction--Admiralty Claims* PD 61 para 3.12. As to the supply of documents from court records generally see CPR 5.4; and **CIVIL PROCEDURE** vol 11 (2009) PARA 82. As to the payment of fees prescribed to be taken in the Supreme Court see the Civil Proceedings Fees Order 2008, SI 2008/1053; and **CIVIL PROCEDURE** vol 11 (2009) PARA 87.

28 As to acknowledgment of service see CPR 61.3(4); *Practice Direction--Admiralty Claims* PD 61 paras 3.4, 3.9, 3.11; and PARA 168. As to judgments in default generally see CPR Pt 12 (cited in **CIVIL PROCEDURE** vol 11 (2009) PARA 506 et seq) and CPR 10.2 (cited in **CIVIL PROCEDURE** vol 11 (2009) PARA 186).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

160 Service of the in rem claim form

NOTES 3, 12--CPR Pt 6 substituted by SI 2008/2178.

NOTE 15--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) paras B9, B10.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(iii) Admiralty Claims except Limitation Claims/B. COMMENCEMENT OF CLAIMS/(A) Commencement of Claims in rem/(b) Warrant of Arrest/161. Application for and issue of warrant of arrest.

(b) Warrant of Arrest

161. Application for and issue of warrant of arrest.

In a claim in rem¹, the claimant and a judgment creditor may apply to have the property proceeded against arrested² by the Admiralty Court³. An application for arrest must contain an undertaking to pay all fees and expenses incurred or to be incurred⁴ and must be accompanied by a declaration in support⁵. When the court receives an application for arrest that complies with the Civil Procedure Rules and the practice direction, it will issue an arrest warrant⁶. Any party making an application for arrest must request a search to be made in the Register⁷ before the warrant is issued in order to determine whether there is a caution against arrest in force with respect to that property⁸, and file a declaration in the required form⁹. The declaration so required¹⁰ must be verified by a statement of truth¹¹ and must state:

- 285 (1) in every claim: (a) the nature of the claim or counterclaim and that it has not been satisfied and if it arises in connection with a ship, the name of that ship¹²; (b) the nature of the property to be arrested and, if the property is a ship, the name of the ship and her port of registry¹³; and (c) the amount of the security sought, if any¹⁴.
- 286 (2) in a claim against a ship (or a sister ship) over which the court has jurisdiction¹⁵: (a) the name of the person who would be liable on the claim if it were not commenced in rem¹⁶; (b) that the person referred to in head (2)(a) above was, when the right to bring the claim arose, either the owner (or charterer) of, or in possession or in control of, the ship in connection with which the claim arose¹⁷; and (c) that at the time the claim form was issued the person referred to in head (2)(a) above was either the beneficial owner of all the shares in the ship in respect of which the warrant is required or the charterer of it under a charter by demise¹⁸;
- 287 (3) where a warrant of arrest may not be issued against a ship owned by a state where by any convention or treaty, the United Kingdom¹⁹ has undertaken to minimise the possibility of arrest of ships of that state until notice has been served on a consular officer²⁰ at the consular office of that state in London or the port at which it is intended to arrest the ship²¹, that the relevant notice has been served²²;
- 288 (4) where a warrant of arrest may not be issued in a claim in rem against a foreign ship belonging to a port of a state in respect of which an order in council has been made²³, until the expiration of two weeks from appropriate notice to the consul²⁴, that the relevant notice has been sent²⁵; and
- 289 (5) in the case of a claim in respect of liability for oil pollution caused by tankers²⁶, the facts relied on as establishing that the court is not²⁷ prevented from considering the claim²⁸.

It is permissible and proper²⁹ that there should be an arrest of a vessel in one jurisdiction in support of a determination of the merits of a dispute by a court of competent jurisdiction in another contracting or regulation state³⁰ and to provide security for the satisfaction of the judgment given by that court³¹. Likewise, if an arbitration³² has been commenced and the claimants in the arbitration have not obtained security for any possible award in the arbitration,

they may quite properly issue an in rem claim form if they know that a ship belonging to the respondents in the arbitration is coming within the jurisdiction and may arrest that ship in order to obtain security³³.

No warrant of arrest will be issued against a ship owned by a state where, by any convention or treaty, the United Kingdom has undertaken to minimise the possibility of arrest of ships of that state until notice³⁴ has been served on a consular officer at the consular office of that state in London or the port at which it is intended to arrest the ship³⁵ and a copy of that notice is attached to any declaration that has been filed with the application³⁶. Except with the permission of the court or where notice has been given to the consular officer³⁷, a warrant of arrest must not be issued in a claim in rem against a foreign ship belonging to a port of a state in respect of which an order in council has been made³⁸ until the expiration of two weeks from appropriate notice to the consul³⁹.

Where in respect of an in rem claim over which the court has jurisdiction⁴⁰, a ship has been served with a claim form or arrested in a claim in rem brought to enforce that claim, no other ship may be served with a claim form or arrested in that or any other claim in rem brought to enforce that claim; but this does not prevent the issue, in respect of any one such claim, of a claim form naming more than one ship or of two or more claim forms each naming a different ship⁴¹.

1 As to the origin of claims in rem see PARA 83; and as to the jurisdiction of the Admiralty Court in relation to claims in rem see PARA 92 et seq. As to the issue of an in rem claim form see PARA 158 et seq.

As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 There must be a tangible res in existence, and thus a warrant cannot be issued for the arrest of freight apart from a ship or some cargo, nor can freight collected and paid into a bank be arrested: *The Kaleten* (1914) 30 TLR 572.

3 CPR 61.5(1) (CPR Pt 61 added by SI 2001/4015). The practice direction (ie *Practice Direction--Admiralty Claims* PD 61: see note 1) sets out the procedure for applying for arrest: CPR 61.5(2) (as so added). As to the filing of documents with the Admiralty and Commercial Court Registry see PARA 142.

4 Ie the application must be in Form ADM4 (Application and undertaking for arrest and custody): see *Practice Direction--Admiralty Claims* PD 61 para 5.1(1).

5 Ie the application must be accompanied by a declaration in Form ADM5 (Declaration in support of application for warrant of arrest): see *Practice Direction--Admiralty Claims* PD 61 para 5.1(2).

6 *Practice Direction--Admiralty Claims* PD 61 para 5.2.

There are now no special provisions applicable to warrants for arrest where there is a claim arising out of bottomry (as to which see PARA 134), but it should be noted that no such claim has been made in the High Court for many years. It should also be noted that a warrant of arrest may not be issued as of right in the case of property in respect of which the beneficial ownership has, since the issue of the claim form, changed as a result of a sale or disposal by any court in any jurisdiction exercising Admiralty jurisdiction in rem: see CPR 61.5(4) (as added: see note 3). For the circumstances in which the warrant is intended to be issued as of right (ie so long as the statutory requirements are complied with) see also *The Varna* [1993] 2 Lloyd's Rep 253, CA.

7 For the purposes of CPR Pt 61, 'Register' means the Register of cautions against arrest and release which is open to inspection as provided by the practice direction: see CPR 61.1(2)(i) (as added: see note 3). As to cautions against arrest see PARAS 166-167.

8 CPR 61.5(3)(a) (as added: see note 3).

9 CPR 61.5(3)(b) (as added: see note 3). The declaration must be in the form set out in the practice direction (ie *Practice Direction--Admiralty Claims* PD 61: see note 1): see CPR 61.5(3)(b) (as so added). As to the statements that must be made in the declaration see heads (1) to (5) in the text; and see note 5.

10 Ie by CPR 61.5(3)(b) (see the text and note 9): see *Practice Direction--Admiralty Claims* PD 61 para 5.3.

11 It is the duty of the deponent to correct promptly and frankly any statements in the statement of truth that are false or misleading: *The Nordglimt* [1988] 1 QB 183, [1988] 2 All ER 531, [1987] 2 Lloyd's Rep 470. See also *The Andria* [1984] QB 477, [1984] 1 All ER 1126, CA; and PARA 93.

12 *Practice Direction--Admiralty Claims* PD 61 para 5.3(1)(a).

13 *Practice Direction--Admiralty Claims* PD 61 para 5.3(1)(b).

14 *Practice Direction--Admiralty Claims* PD 61 para 5.3(1)(c).

15 Ie by virtue of the Supreme Court Act 1981 s 21(4) (see PARA 93): see *Practice Direction--Admiralty Claims* PD 61 para 5.3(2). It should be noted that under the Supreme Court Act 1981 s 21(4) the claimant does not have the right to arrest a ship which was a ship owned by a sister company of the owning company of 'the particular ship': *The Evpo Agnic* [1988] 3 All ER 810, [1988] 1 WLR 1090, [1988] 2 Lloyd's Rep 411, CA.

16 *Practice Direction--Admiralty Claims* PD 61 para 5.3(2)(a).

17 *Practice Direction--Admiralty Claims* PD 61 para 5.3(2)(b).

18 *Practice Direction--Admiralty Claims* PD 61 para 5.3(2)(c).

19 As to the meaning of 'United Kingdom' see PARA 17 note 3.

20 As to consular officers in the United Kingdom see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 290 et seq.

21 Ie in a case set out in CPR 61.5(5) (see the text and notes 34-36): see *Practice Direction--Admiralty Claims* PD 61 para 5.3(3).

22 *Practice Direction--Admiralty Claims* PD 61 para 5.3(3).

23 Ie under the Consular Relations Act 1968 s 4 (the Orders in Council made thereunder giving effect to a number of international agreements entered into by the United Kingdom: see PARA 128; and **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 303): see *Practice Direction--Admiralty Claims* PD 61 para 5.3(3).

24 Ie in a case set out in CPR 61.5(6) (see the text and notes 37-39): see *Practice Direction--Admiralty Claims* PD 61 para 5.3(3). As to the Civil Procedure Rules that allow the calculation of any period of time for doing any act which is specified by the rules, by a practice direction or by a judgment or order of the court see CPR 2.8, CPR 2.9; and **CIVIL PROCEDURE** vol 11 (2009) PARAS 88, 89.

25 *Practice Direction--Admiralty Claims* PD 61 para 5.3(3).

26 Ie liability incurred under the Merchant Shipping Act 1995 s 153 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 443): see *Practice Direction--Admiralty Claims* PD 61 para 5.3(4).

27 Ie by reason of the Merchant Shipping Act 1995 s 166(2) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 456): see *Practice Direction--Admiralty Claims* PD 61 para 5.3(4).

28 *Practice Direction--Admiralty Claims* PD 61 para 5.3(4).

29 Ie under the Civil Jurisdiction and Judgments Act 1982 (and the provisions to which that Act gives force) (see PARA 96).

30 See PARA 96.

31 *The Nordglimt* [1988] 1 QB 183, [1988] 2 All ER 531, [1987] 2 Lloyd's Rep 470.

32 As to arbitration agreements see PARA 103.

33 *The Jalamatsya* [1987] 2 Lloyd's Rep 164 (considering the Civil Jurisdiction and Judgments Act 1982 s 26 (as to which see PARA 86)); *The Vasso (formerly Andria)* [1984] QB 477, [1984] 1 All ER 1126, [1984] 1 Lloyd's Rep 235.

34 Ie notice in the form set out in the practice direction, *Practice Direction--Admiralty Claims* PD 61: see CPR 61.5(5)(a) (as added: see note 3). Accordingly, the notice required by CPR 61.5(5)(a) must be in Form ADM6 (Notice to Consular Officer of intention to apply for warrant of arrest): *Practice Direction--Admiralty Claims* PD 61 para 5.4.

35 CPR 61.5(5)(a) (as added: see note 3).

36 CPR 61.5(5)(b) (as added: see note 3). The text refers to any declaration under CPR 61.5(3)(b) (see the text and note 9): see CPR 61.5(5)(b) (as so added).

37 Ie under CPR 61.5(5) (see the text and notes 34-36): see CPR 61.5(6) (as added: see note 3).

38 Ie under the Consular Relations Act 1968 s 4 (the Orders in Council made thereunder giving effect to a number of international agreements entered into by the United Kingdom: see PARA 128; and **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 303): see CPR 61.5(6) (as added: see note 3).

39 CPR 61.5(6) (as added: see note 3).

40 Ie by virtue of the Supreme Court Act 1981 ss 20(2)(e)-(r), 21(4) (see PARAS 93, 110 et seq).

41 See the Supreme Court Act 1981 s 21(8); and PARA 93.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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162. Execution of warrant of arrest.

A warrant of arrest¹ must be executed within the jurisdiction². A warrant of arrest is valid for 12 months but may only be executed if the claim form has been served or remains valid for service at the date of execution³. The arrest of property may only be effected by the Admiralty Marshal or his substitute⁴; and the warrant will not be executed without a written undertaking to pay the Marshal's fees and expenses incurred, or to be incurred, by him or on his behalf in respect of the arrest, or endeavours to arrest, the property⁵. The detainer of a vessel or other property in consequence of directions sent by fax is not unusual, and the disregard of a notice by telegram from the Admiralty Marshal that a warrant has been issued against property and that the property is not to be removed is a contempt of court⁶.

1 As to applications for and the issue of a warrant of arrest see PARA 161.

As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 This limitation has always been fundamental to Admiralty procedure in rem: see eg *The Banco* [1971] P 137 at 150, [1971] 1 All ER 524 at 531, [1971] 1 Lloyd's Rep 49 at 51, CA, per Lord Denning MR. As to the Admiralty jurisdiction of the High Court see PARA 85 et seq.

3 CPR 61.5(7) (CPR Pt 61 added by SI 2001/4015). As to the Civil Procedure Rules that allow the calculation of any period of time for doing any act which is specified by the rules, by a practice direction or by a judgment or order of the court see CPR 2.8, CPR 2.9; and **CIVIL PROCEDURE** vol 11 (2009) PARAS 88, 89. There is no provision for the renewal of a warrant, but a fresh warrant may be applied for if the period has expired.

4 CPR 61.5(8) (as added: see note 3). As to the Admiralty Marshal see PARA 160 note 6. For a note on current procedures for the arrest of a ship see *The Johnny Two* [1992] 2 Lloyd's Rep 257 at 260 per Sheen J. Officers of Revenue and Customs act as the Admiralty Marshal's substitutes at outlying ports. As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

5 The undertaking forms part of the application to arrest in Form ADM4 (Application and undertaking for arrest and custody): see PARA 161. Where, in CPR 61 or in *Practice Direction--Admiralty Claims* PD 61, any undertaking to the Marshal is required it must be given in writing and to his satisfaction or in accordance with such other arrangements as he may require: *Practice Direction--Admiralty Claims* PD 61 para 14.1. Where any party is dissatisfied with a direction given by the Marshal in this respect he may apply to the Admiralty Registrar for a ruling: *Practice Direction--Admiralty Claims* PD 61 para 14.2. As to the Admiralty Registrar see PARA 140.

As to recovery of expenses from the proceeds of sale paid to the Marshal by an arresting party see *The Falcon* [1981] 1 Lloyd's Rep 13. The marshal's expenses of maintaining the arrest from the time of lodgment of a commission of appraisement and sale and the expenses of the sale are payable in the first instance by the party lodging the commission: *The Falcon*. As to liability for the expenses of second and subsequent arrests see *The Falcon*.

6 *The Seraglio* (1885) 10 PD 120; *The Jarlinn* [1965] 3 All ER 36, [1965] 1 WLR 1098, [1965] 2 Lloyd's Rep 191. As to the mode of service of a warrant of arrest etc see also PARA 163.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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163. Mode of effecting service of warrant of arrest etc.

Warrants of arrest or in rem claim forms¹, because of the urgency associated with them, may be served on Sundays and other non-working days as required². Service of either an in rem claim form or a warrant³, if the property to be arrested is a ship, freight, or cargo on board, must be effected by affixing a copy on the outside of the property proceeded against in a position which may reasonably be expected to be seen⁴. If it is not reasonably practicable in the case of a warrant to serve the warrant itself, the property may be arrested by service of a notice of issue of the warrant on the property⁵ or by giving notice to those in charge of the property⁶. A ship may be arrested even when the sheriff is in possession, as the seizure by the sheriff can only be subject to any maritime liens with which the ship is incumbered⁷.

1 As to in rem claim forms see PARA 158 et seq; and as to applications for and the issue and execution of a warrant of arrest see PARAS 161-162.

As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 As to service of the in rem claim form see PARA 160; and as to service of a warrant see PARAS 161-162. For details of when service is deemed to take place generally see CPR 6.7; and **CIVIL PROCEDURE** vol 11 (2009) PARA 151.

3 Property is arrested by service on it of an arrest warrant in Form ADM9 (warrant of arrest): see *Practice Direction--Admiralty Claims* PD 61 para 5.5(1).

4 See *Practice Direction--Admiralty Claims* PD 61 paras 3.6(1), 5.5(1); and CPR 61.8(1) (cited in PARA 164). A warrant against freight may be executed by service on the cargo or on the ship: see *Practice Direction--Admiralty Claims* PD 61 paras 3.6(1)(b), 5.5(1). However, where neither ship nor cargo can be arrested, a warrant cannot be issued for the arrest of freight only: *The Kaleten* (1914) 30 TLR 572 (service of warrant for arrest of freight on a clerk of the shipowner's agent held to be bad).

These methods of service are mandatory and service will be set aside if there is a substantial failure to carry out the proper procedure: *The Prins Bernhard* [1964] P 117, [1963] 3 All ER 735, [1963] 2 Lloyd's Rep 236. Minor irregularities may, however, be condoned: *The Sullivar* [1965] 2 Lloyd's Rep 350.

5 Ie in the manner set out in *Practice Direction--Admiralty Claims* PD 61 para 3.6(1) (see the text and note 4; and PARA 160): see para 5.5(2).

6 See *Practice Direction--Admiralty Claims* PD 61 para 5.5(2). See note 3.

7 *The James W Elwell* [1921] P 351. As to maritime liens generally see PARA 1014 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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163 Mode of effecting service of warrant of arrest etc

NOTE 2--CPR Pt 6 substituted by SI 2008/2178.

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164. Custody of arrested property.

Property under arrest¹ may not be moved without an order of the Admiralty Court and the property may be immobilised or otherwise prevented from sailing in such manner as the Admiralty Marshal² may consider is appropriate³. Where property is under arrest, an in rem claim form⁴ may be served upon it and, in addition, it may be arrested by any other person claiming to have an in rem claim against it⁵.

A ship-keeper may be put in possession under the authority of the Admiralty Marshal during the time a ship is under arrest, and any person breaking the arrest or interfering with the property whilst it is under arrest is guilty of a contempt of court and liable to committal or a fine⁶. By the mere arrest of a ship the Marshal gains custody and not possession; subject to his control of the custody all possessory rights which previously existed continue to exist, including all the remedies which are based on possession⁷.

1 As to applications for, and the service and execution of, a warrant of arrest see PARAS 161-163.

As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 As to the Admiralty Marshal see PARA 160 note 6.

3 CPR 61.5(9) (CPR Pt 61 added by SI 2001/4015). When property is arrested, the Admiralty Registrar will issue standard directions in Form ADM10 (Standard Directions to the Admiralty Marshal): *Practice Direction--Admiralty Claims* PD 61 para 5.6. As to the Admiralty Registrar see PARA 140. As to release and other dealings with arrested property see further PARA 173 et seq. As to liability for the cost of maintaining a ship see *The Falcon* [1981] 1 Lloyd's Rep 13.

4 As to in rem claim forms see PARA 158 et seq.

5 CPR 61.8(1) (as added: see note 3).

6 *The Harmonie* (1841) 1 Wm Rob 179; *The Mathesis* (1844) 2 Wm Rob 286 at 288; *The Bure* (1850) 14 Jur 1123; *The Armenian* (20 March 1874, unreported), Admiralty Court; *The Seraglio* (1885) 10 PD 120; *The Jarlinn* [1965] 3 All ER 36, [1965] 1 WLR 1098, [1965] 2 Lloyd's Rep 191; *The Jarvis Brake* [1976] 2 All ER 886, [1976] 2 Lloyd's Rep 320; *The Merdeka* [1982] 1 Lloyd's Rep 401. In the last case, a master who broke arrest was not committed to prison but was fined. However, the judge indicated that in a proper case the court would be prepared to commit to prison a master who breaks arrest. Forcible exclusion of the master whilst the ship is in the custody of the Admiralty Marshal is a contempt of court: *The Abodi Mendi* [1939] P 178, [1939] 1 All ER 701, 63 Ll L Rep 100, CA.

7 *Spain v The Arantzazu Mendi* [1939] AC 256, [1939] 1 All ER 719, HL; *The Queen of the South* [1968] P 449 (exercise of a statutory right of detention).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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165. Forgoing of service where undertakings are made by solicitor.

Where the solicitor of the defendant agrees to accept service and undertakes to provide security, no service on the property of the in rem claim form or warrant is required¹. Where a solicitor fails to comply with his written undertaking to acknowledge service of the claim form, or provide security, he is liable to committal² and the undertaking remains binding though no claim form has been issued³. The undertaking once given cannot be withdrawn on offering the ship, within the jurisdiction, for arrest, nor do the claimants, by arresting the ship under such circumstances, forfeit their rights under the undertaking⁴, and the fact that the undertaking has been given by the solicitor under a mistake as to his authority is no reason for setting it aside⁵. The value of the ship for the purpose of security in pursuance of the undertaking must be ascertained as at the date of the undertaking⁶.

1 It is submitted that the practice described in the text, which was formerly governed by RSC Ord 75 r 9, seems to be observed still, although the rule has been revoked and there is no direct replacement provision in the Civil Procedure Rules. (As to service under the CPR generally see **CIVIL PROCEDURE** vol 11 (2009) PARA 138 et seq). As to service of the in rem claim form see PARA 160; and as to service of a warrant of arrest see PARA 163. As regards arrest, the situation is analogous to that which arises upon the entry of a caution against release: see PARA 167. As to undertakings in Admiralty proceedings generally see PARA 162.

2 See *The Anna and Bertha* (1891) 64 LT 332; and cf *Re Kerly, Son and Verden* [1901] 1 Ch 467, CA. For the practice on committal see **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 493 et seq.

3 *The Ring* [1931] P 58.

4 *The Borre* [1921] P 390.

5 *The Gertrud* (1927) 138 LT 239.

6 See *The Borre* [1921] P 390 (bail).

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(c) *Caution against Arrest*

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

166. Entry of caution against arrest.

Any person may file¹ a request for a caution against arrest², which must be in the prescribed form³. When a request is filed in this way, the court will enter the caution in the Register⁴ if the request is duly completed⁵ and if:

- 290 (1) the person filing the request undertakes to file an acknowledgment of service and to give sufficient security to satisfy the claim with interest and costs⁶; or
- 291 (2) where the person filing the request has constituted a limitation fund⁷, he states that such a fund has been constituted and he undertakes that the claimant will acknowledge service of the claim form by which any claim may be begun against the property described in the request⁸.

The entry of a caution against arrest is not treated as a submission to the jurisdiction of the English Court⁹.

A caution against arrest is valid for 12 months after the date it is entered in the Register¹⁰; but may be renewed for a further 12 months by filing a further request¹¹.

1 As to the filing of documents in the Admiralty and Commercial Court Registry see PARA 142.

2 CPR 61.7(1) (CPR Pt 61 added by SI 2001/4015). In modern practice, cautions are not often used and undertakings to provide sufficient security, given directly by the defendant's solicitors to the claimant, are more usual. Be that as it may, it is submitted that the provisions with regard to caution against arrest apply equally to arrests at the instance of defendants as to arrests at the instance of claimants. This practice was formerly governed by RSC Ord 75 rr 5(1), 6(1), 14(1) and it appears that the practice is still being observed, although the rule has been revoked and there is no direct replacement provision in the Civil Procedure Rules.

As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS**

vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

3 See *Practice Direction--Admiralty Claims* PD 61 para 6.2. Accordingly, the request must be in Form ADM7 (Request for caution against arrest): see *Practice Direction--Admiralty Claims* PD 61 para 6.2. See also the text and notes 5-8.

4 See CPR 61.7(2) (as added: see note 2); *Practice Direction--Admiralty Claims* PD 61 para 6.3. As to the meaning of 'Register' for these purposes see PARA 161 note 7. The Register is open for inspection when the Admiralty and Commercial Registry is open: *Practice Direction--Admiralty Claims* PD 61 para 6.4. A caution entered in the Register under CPR 61.7 is known as a 'caution against arrest' for the purposes of CPR Pt 61: CPR 61.1(2)(g) (as so added).

5 If the request is in the form set out in the practice direction (ie *Practice Direction--Admiralty Claims* PD 61: see note 2): see CPR 61.7(2) (as added: see note 2).

6 CPR 61.7(2)(a) (as added: see note 2).

7 If in accordance with the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; Misc 31 (1978); Cmnd 7035) art 11 (see PARA 1053): see CPR 61.7(2)(b) (as added: see note 2). See also PARA 176.

8 CPR 61.7(2)(b) (as added: see note 2).

9 *Practice Direction--Admiralty Claims* PD 61 para 6.1.

10 CPR 61.7(3)(a) (as added: see note 2). As to the withdrawal of cautions see PARA 175.

11 CPR 61.7(3)(b) (as added: see note 2). The provisions of CPR 61.7(1), (2) (see the text and notes 1-8) apply to a further request under CPR 61.7(3)(b): CPR 61.7(4) (as so added).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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167. Effect of caution against arrest.

The entry in the Register¹ of a caution against arrest² does not prevent the arrest of the subject property but, in such a case, the Admiralty Court³ may order that the arrest be discharged⁴ and that the party procuring the arrest pays compensation to the owner of or other persons interested in the property arrested⁵.

A solicitor, by signing a request for a caution without qualification⁶, renders himself personally liable to perform the undertaking contained therein, and where such an undertaking has been given the claimant is entitled to have a reasonable opportunity of seeing whether he ought to accept it or not; if it is not a satisfactory undertaking, or for any other good and sufficient reason he does not accept it, he will not be condemned in costs and damages for taking out a warrant for arrest⁷. A preliminary search in order to determine whether there is a caution against arrest in force with respect to the subject property is thus advisable in the interest of the claimant in addition to being compulsory before an arrest is made⁸.

1 As to the meaning of 'Register' for these purposes see PARA 161 note 7.

2 As to the entry of a caution against arrest see PARA 166.

3 As to the meaning of 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91. As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meaning of 'Admiralty claim' for these purposes see PARA 91 note 3.

4 CPR 61.7(5)(a) (CPR Pt 61 added by SI 2001/4015).

5 CPR 61.7(5)(b) (as added: see note 4). See also *The Crimdon* [1900] P 171; and the text and notes 6-7. As to the liability in tort for the malicious arrest of a ship see *The Strathnaver* (1875) 1 App Cas 58, PC; and **TORT** vol 45(2) (Reissue) PARAS 498-499. As to a case of wrongful arrest see *Gulf Azov Shipping Co Ltd v Chief Humphrey Irikefe Idisi* [2001] EWCA Civ 505, [2001] 2 All ER (Comm) 673, [2001] 1 Lloyd's Rep 727 (on the facts, the vessel had been detained by the defendants and that detention was wholly improper and lasted for an unconscionable time; it was clear that there was no objective justification for the amount claimed).

6 Ie in Form ADM7 (Request for caution against arrest) (see PARA 166). In modern practice, cautions are not often used and undertakings to provide sufficient security, given directly by the defendant's solicitors to the claimant, are more usual.

7 *The Crimdon* [1900] P 171; cf PARA 165.

8 See CPR 61.5(3); and PARA 161.

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(d) Acknowledgment of Service

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

168. Acknowledgment of service of claim form in rem.

If the defendant to an Admiralty claim in rem¹ wishes to contest the proceedings, either on the merits or on a point of jurisdiction² or irregularity, he is required in all cases to acknowledge service of the in rem claim form³. A defendant who files an acknowledgment of service to an in rem claim does not lose any right he may have to dispute the jurisdiction of the court⁴.

After the acknowledgment of service has been filed, the claim will follow the procedure applicable to a claim proceeding in the Commercial List⁵ except that the claimant is allowed 75 days to serve the particulars of claim⁶.

If the defendant fails to acknowledge service within the prescribed time, the claimant may apply for judgment in default of notice of intention to defend⁷.

¹ As to in rem claims see PARA 158 et seq. As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

² See eg *The Sydney Express* [1988] 2 Lloyd's Rep 257.

³ An acknowledgment of service must be filed in every in rem claim within 14 days after service of the claim form: CPR 61.3(4) (CPR Pt 61 added by SI 2001/4015). This period applies irrespective of whether the claim form contains particulars of claim: see *Practice Direction--Admiralty Claims* PD 61 para 3.5. As to service of the in rem claim form see PARA 160. For details of when service is deemed to take place generally see CPR 6.7; and **CIVIL PROCEDURE** vol 11 (2009) PARA 151. As to the Civil Procedure Rules that allow the calculation of any period of time for doing any act which is specified by the rules, by a practice direction or by a judgment or order of the court see CPR 2.8, CPR 2.9; and **CIVIL PROCEDURE** vol 11 (2009) PARAS 88, 89.

The acknowledgment of service must be in Form ADM2 (Acknowledgment of service) and the person who acknowledges service must identify himself by name therein: *Practice Direction--Admiralty Claims* PD 61 para

3.4. If an in rem claim form has been issued (whether served or not), any person who wishes to defend the claim may file an acknowledgment of service: CPR 61.3(6) (as so added).

4 *Practice Direction--Admiralty Claims* PD 61 para 3.11. As to acknowledgment of service in general see CPR 10.1; and **CIVIL PROCEDURE** vol 11 (2009) PARA 184. As to the procedure for disputing the court's jurisdiction generally see CPR Pt 11; and **CIVIL PROCEDURE** vol 11 (2009) PARA 206. See also PARA 160. As to the filing of documents with the Admiralty and Commercial Court Registry see PARA 142.

5 As to which see note 1.

6 *Practice Direction--Admiralty Claims* PD 61 para 3.10. See also the Admiralty and Commercial Courts Guide para N4.4. As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1.

7 See CPR 61.9; and PARA 190 et seq. As to judgments in default generally see CPR Pt 12 (cited in **CIVIL PROCEDURE** vol 11 (2009) PARA 506 et seq) and CPR 10.2 (cited in **CIVIL PROCEDURE** vol 11 (2009) PARA 186). As to undertakings to acknowledge service see PARA 165.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

168 Acknowledgment of service of claim form in rem

NOTE 3--CPR Pt 6 substituted by SI 2008/2178.

NOTE 6--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para N4.4.

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169. Persons who may acknowledge service of claim form in rem.

An acknowledgment of service must be filed in every in rem claim¹ and the person who acknowledges service must identify himself in it by name². Where the defendants are described and not named on the claim form (for example as 'The Owners of the Ship X'), any acknowledgment of service, in addition to stating that description which appears on the claim form, must also state the full names of the persons acknowledging service and the nature of their ownership³. Any person interested in property under arrest (or in the proceeds of sale of such property), or whose interests are affected by any order sought or made, may be made a party to any claim in rem against the property or proceeds of sale⁴. Examples of persons having an interest are mortgagees⁵, trustees in bankruptcy⁶, underwriters who have accepted abandonment⁷, charterers⁸, persons who have possessory liens⁹, or competing maritime liens¹⁰, owners who have purchased the property against which the claim is brought since the date of the issue of the in rem claim form¹¹, and generally persons who are claimants in other claims in rem against the same property¹². If, however, the intervention is unnecessary to protect the intervenor's rights he will be refused his costs¹³. Persons who intervene in order to defend the claim cannot set up defences which are not open to the owner of the property¹⁴.

1 As to in rem claims see PARA 158 et seq; and as to acknowledgment of service of claim forms in rem see PARA 168. As to the filing of documents with the Admiralty and Commercial Court Registry see PARA 142.

As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 See CPR 61.3(4); *Practice Direction--Admiralty Claims* PD 61 para 3.4; and PARA 168.

3 *Practice Direction--Admiralty Claims* PD 61 para 3.9. A defendant may acknowledge service voluntarily even though the claim form has not been served: see CPR 61.3(6); and PARA 168. See also *The Gniezno* [1968] P 418, [1967] 2 All ER 738, [1967] 1 Lloyd's Rep 441. If the claim form is served on a ship which has been sold since the date of issue of the claim form, the correct procedure is for those who were the owners of the ship at the time when the claim form was issued to acknowledge service; the new owners should make an application for leave to intervene in the claim under CPR 61.8(7) (as to which see the text and note 4): see *The Mawan now named Mara* [1988] 2 Lloyd's Rep 459.

4 CPR 61.8(7) (CPR Pt 61 added by SI 2001/4015). See also PARA 173. These provisions are designed to allow those who have substantial interests in the res ('the property') to intervene, as their interests may otherwise be adversely affected by the claim. The rights of the interveners are limited to the protection of their interests in the property; interveners therefore will not be allowed to raise issues which are ancillary to that purpose: *The Lord Strathcona* [1925] P 143; *The Byzantion* (1922) 127 LT 756, 16 Asp MLC 19. Any party who wishes to resist an application for payment out must either intervene or enter a caution: *The Eva* [1921] P 454. As to cautions see PARAS 166-167. Parties who intervene in order to postpone the sale of the ship may be ordered to give security, which may be increased even after judgment: *The Lord Strathcona (No 2)* [1926] P 18. As to the provision of security see PARAS 171-172. Even where a party has no interest in the res ('the property') under arrest, there is an inherent jurisdiction to grant leave to intervene where justice requires to prevent serious hardship to that party: *The Mardina Merchant* [1974] 3 All ER 749, [1975] 1 WLR 147. As to the addition and

substitution of parties, representative parties, and group litigation generally see CPR Pt 19; and **CIVIL PROCEDURE** vol 11 (2009) PARA 210 et seq.

5 *The Regina del Mare* (1864) Brown & Lush 315 at 316; *The Orienta* [1895] P 49, CA; *The Tagus* [1903] P 44.

6 See *The Riga* (1872) LR 3 A & E 516.

7 Underwriters who have not accepted an abandonment have been allowed to intervene on giving security for costs: see *The Regina del Mare* (1864) Brown & Lush 315.

8 *The Lord Strathcona* [1925] P 143 at 150.

9 *The Immacolata Concezione* (1882) 8 PD 34 at 36; *The Queen of the South* [1968] P 449, [1968] 1 All ER 1163, [1968] 1 Lloyd's Rep 182.

10 See eg *The Linda Flor* (1857) Sw 309; *The Veritas* [1901] P 304 at 308. As to maritime liens generally see PARA 1014 et seq.

11 *The Mawan now named Mara* [1988] 2 Lloyd's Rep 459.

12 *The Two Ellens* (1871) LR 3 A & E 345 at 355; *The Chioggia* [1898] P 1 at 3.

13 *The Athenic* [1932] WN 10, 48 TLR 158, 42 Ll L Rep 7.

14 *The Byzantion* (1922) 127 LT 756, 16 Asp MLC 19.

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79-228 Admiralty Jurisdiction of the High Court

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170. Late acknowledgment of service of claim form in rem.

If a defendant acknowledges service of a claim form in rem¹ at any time after the time limited by the rules for acknowledging service (that is, 14 days after the service of the in rem claim form including the day of service²), he is not, unless the court otherwise orders, entitled to any further time for delivering his defence or for any other purpose than if he had acknowledged service within that time³.

¹ As to in rem claims see PARA 158 et seq; and as to acknowledgment of service of claim forms in rem see PARAS 168-169.

As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

² See CPR 61.3(4); and PARA 168. As to the Civil Procedure Rules that allow the calculation of any period of time for doing any act which is specified by the rules, by a practice direction or by a judgment or order of the court see CPR 2.8, CPR 2.9; and **CIVIL PROCEDURE** vol 11 (2009) PARAS 88, 89. As to acknowledgment of service in general see CPR Pt 10 (cited in **CIVIL PROCEDURE** vol 11 (2009) PARAS 184, 186); and the Admiralty and Commercial Courts Guide para B8. As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1.

³ See CPR Pt 3; and **CIVIL PROCEDURE** vol 11 (2009) PARA 247 et seq.

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170 Late acknowledgment of service of claim form in rem

NOTE 2--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para B9.

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(e) Provision of Security

171. Introduction.

The usual step following an acknowledgment of service in a claim in rem¹ is for the owner of the property arrested to procure its release² by giving security for the claimant's claim³. This may be done: (1) by paying the amount of the claimant's claim into court⁴; (2) by providing security in a sufficient amount⁵; or (3) by furnishing a guarantee acceptable to the claimant⁶. The third method is the most common in practice.

1 As to acknowledgment of service of a claim form in rem see PARAS 168-170.

2 For the procedure relating to release see PARAS 173-176.

3 It is submitted that the provisions with regard to caution against arrest or release, releases, security, payment into court and guarantees in lieu of bail apply equally to arrests at the instance of defendants as to arrests at the instance of claimants. This practice was formerly governed by RSC Ord 75 rr 5(1), 6(1), 14(1) and it appears that the practice is still being observed, although the rule has been revoked and there is no direct replacement provision in the Civil Procedure Rules.

4 Money paid into court as security must, in proceedings taking place in London, be paid into the Court Funds Office and such payment is subject to the Court Funds Rules 1987, SI 1987/821: see **CIVIL PROCEDURE** vol 12 (2009) PARA 1548 et seq. See also *The Markland* (1871) LR 3 A & E 340 at 344; *The Fairport (No 4)* [1967] 2 All ER 914n, [1967] 1 WLR 964, [1967] 1 Lloyd's Rep 602.

5 See PARA 172.

6 In practice, a guarantee or undertaking by a bank, insurance company, protection and indemnity association, or other guarantor satisfactory to the claimant, to pay any amount found to be due from the defendant and not paid by him is usually accepted in lieu of payment into court. In particular, the existence of the guarantee protects the ship against further arrest, for the purpose of obtaining further security in connection with the same cause of action, unless the arresting party has good reason to consider the guarantee insufficient or inoperative: see *The Christiansborg* (1885) 10 PD 141, CA; *The Hartlepool* (1950) 84 Ll L Rep 145; *Westminster Bank Ltd v West of England Steamship Owners' Protection and Indemnity Association Ltd* (1933) 46 Ll L Rep 101; *The Tjaskemolen (No 2)* [1997] 2 Lloyd's Rep 476.

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172. Security given to obtain release or to prevent arrest of property.

Where an in rem claim form has been issued¹ and security sought, any person who has filed an acknowledgment of service² may apply to the Admiralty Court for an order specifying the amount and form of security to be provided³.

Where, in relation to a claim in rem, security has been given either to obtain the release of property under arrest or to prevent the arrest of property⁴, the court may order: (1) that the amount of security be reduced (and the court may stay the claim until the order is complied with)⁵; or (2) that the claimant be permitted to arrest⁶ or re-arrest the property proceeded against in order to obtain further security⁷, provided that the total security to be so provided does not exceed the value of the property at the time of the original arrest or (if the property was not arrested) at the time security was first given⁸.

1 As to in rem claims see PARA 158 et seq. As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 As to acknowledgment of service of a claim form in rem see PARAS 168-170.

3 CPR 61.5(10) (CPR Pt 61 added by SI 2001/4015). Historically, the provision of bail as security in Admiralty proceedings was known but this practice has been, and is expected to be, a rarity. Be that as it may, as to the form of bail bond see *The Bulgaria* [1964] 2 Lloyd's Rep 524 (bond expressly reserving the defendant's right to seek to set aside the claim on grounds of sovereign immunity was allowed); and *The Cap Bon* [1967] 1 Lloyd's Rep 543 (form cannot be so altered as to cover a purpose which is not the purpose of Admiralty proceedings in rem). As to the amount, effect and costs of bail see *The Moschanthy* [1971] 1 Lloyd's Rep 37; *The Tribels* [1985] 1 Lloyd's Rep 128 (claim for salvage); *The Russland* [1924] P 55 (number of claims against a ship in respect of which bail has been provided to answer one claim only); *The Roberta* [1938] P 1, CA (third party proceedings); *The Point Breeze* [1928] P 135 (appraisal to ascertain the value of the property). See also *The Joannis Vatis (No 2)* [1922] P 213; and *The Tjaskemolen (No 2)* [1997] 2 Lloyd's Rep 476 (provision of further security). A claimant who has insisted upon bail in an excessive sum may be ordered to pay the additional costs incurred as a result: *The Princesse Marie José* (1913) 109 LT 326; *The George Gordon* (1884) 9 PD 46; *The Chieftain* (1863) 32 LJP & A 106; *The Polo II* [1977] 2 Lloyd's Rep 115. As to the amount of bail in collision claims see *The Duchesse de Brabant* (1857) Sw 264; *The Sisters* (1875) 32 LT 837; *The Charlotte* [1920] P 78; *The Norwalk Victory* (1949) 82 Ll L Rep 539.

4 See CPR 61.6(1) (as added: see note 3).

5 CPR 61.6(2)(a) (as added: see note 3). Where the Admiralty Court orders a stay of any claim in rem, any property under arrest in the claim remains under arrest, and any security representing the property remains in force, unless the court otherwise orders: CPR 61.12 (as so added).

6 As to arrest see PARA 161 et seq.

7 CPR 61.6(2)(b) (as added: see note 3).

8 CPR 61.6(3) (as added: see note 3).

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(f) Dealings with Arrested Property

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

173. Removal of property under arrest.

If it is necessary for measures to be taken with respect to property which is under arrest pursuant to an Admiralty claim in rem¹, for instance if it is necessary to remove the property to another place than that at which it was arrested, or for cargo to be unloaded from a ship under arrest, the Admiralty Marshal² or other interested party must apply to the court for directions³. The need for such an order is often avoided by the issue of an 'omnibus' order by the Admiralty Registrar⁴ at the time of the arrest, which normally sets out various measures with respect to the custody of the ship⁵. The Admiralty Marshal will not insure property under arrest for the benefit of parties at any time during the period of arrest (whether before or after the lodging of an application for sale, if any)⁶.

Where a ship is not under arrest (but cargo on board her is) or where a ship is under arrest (but cargo on board her is not), and persons interested in the ship or cargo wish to discharge the cargo, they may, without being made parties to the proceedings, request the Admiralty Marshal to authorise steps to discharge the cargo⁷. If the Admiralty Marshal considers such a request reasonable, and if the applicant gives an undertaking in writing acceptable to the Admiralty Marshal to pay his fees, and to pay all expenses to be incurred by him or on his behalf, on demand, the Admiralty Marshal will apply to the court for an order to permit the discharge of the cargo⁸. Where those persons interested in the ship or cargo are unable or unwilling to give such an undertaking, they may be made parties to the claim, and they may apply to the court for an order for discharge of the cargo and for directions as to the fees and expenses of the Admiralty Marshal with regard to the discharge and storage of the cargo⁹.

1 As to Admiralty claims in rem see PARA 158 et seq; and as to arrest see PARA 161 et seq.

As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS**

vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 As to the Admiralty Marshal see PARA 160 note 6.

3 See CPR 61.5(9); and PARA 164.

As to payment of dock dues by the Admiralty Marshal see *The Queen of the South* [1968] P 449, [1968] 1 All ER 1163, [1968] 1 Lloyd's Rep 182; *The Freightline One* [1986] 1 Lloyd's Rep 266. The same procedure will apply in respect of light dues but not in respect of mooring charges: see *R v Carrick District Council, ex p Prankerd, The Winnie Rigg* [1999] QB 1119, [1998] 2 Lloyd's Rep 675.

4 As to the Admiralty Registrar see PARA 140.

5 See *Practice Direction--Admiralty Claims* PD 61 para 5.6; and PARA 164. When property is arrested, the Admiralty Registrar will issue standard directions in Form ADM10 (Standard Directions to the Admiralty Marshal): See *Practice Direction--Admiralty Claims* PD 61 para 5.6; and PARA 164.

6 See *Practice Direction--Admiralty Claims* PD 61 para 5.7; and Admiralty and Commercial Courts Guide para N13.1. As to sale see PARA 178. The Admiralty Marshal will, however, use his best endeavours (but without any legal liability for failure to do so) to advise all parties known to him as being on the record in claims in rem against the arrested property, including those who have filed cautions against the release of that property, before any such property moves or is moved beyond the area covered by the usual port risks policy: Admiralty and Commercial Courts Guide para N13.2. The usual port risks policy provides, among other things, for a ship to be moved or towed from one berth to another up to a distance of 5 miles within the port where she is lying: Admiralty and Commercial Courts Guide para N13.3. The Guide also draws the attention of practitioners to the necessity of considering questions of insuring against port risks for the amount of their clients' interest in any property arrested in an Admiralty claim and the inclusion in any policy of a 'Held Covered' clause in case the ship moves or is moved outside the area covered by the usual port risks policy: see the Admiralty and Commercial Courts Guide para N13.3. As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1.

7 CPR 61.8(8) (CPR Pt 61 added by SI 2001/4015). There is a general principle that cargo owners must pay for the removal of their own cargo from an arrested ship and that such cost should not be met from the sale of the ship by the Admiralty Marshal: *The Jogoo* [1981] 3 All ER 634, [1981] 1 WLR 1376, [1981] 1 Lloyd's Rep 513.

8 CPR 61.8(9) (as added: see note 7).

9 CPR 61.8(10) (as added: see note 7). For an order for renewal under the court's inherent jurisdiction to prevent hardship see *The Mardina Merchant* [1974] 3 All ER 749, [1954] 1 WLR 147; *Kleinwort Benson Ltd v Sherakte Sahami Sakht, The Myrto (No 2)* [1984] 2 Lloyd's Rep 341.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

173 Removal of property under arrest

NOTE 6--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para N13.1-N13.3.

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174. Release where there is a caution against release or payment out.

Any person who claims to have an in rem¹ right against any property under arrest pursuant to an Admiralty claim in rem², and who wishes to be given notice of any application to the court in respect of that property or its proceeds of sale³, may file a request for a caution against release⁴. When such a request is filed, a caution against release will be entered in the Register⁵.

A search for cautions must be made before a release is issued⁶ and, if there is a caution in force, release may not be issued unless at the time of the issue of the release the property is sold by the Admiralty Court, or unless the court orders release⁷.

Where the release of any property under arrest is delayed by the entry of a caution against release⁸, any person having an interest in the property may apply for an order requiring the person who entered the caution to pay damages for losses suffered by the applicant because of the delay⁹. However, the court may not make such an order if it is satisfied that there was good reason both to request the entry of, and to maintain, the caution¹⁰. An objection to the sufficiency of security¹¹ which afterwards was shown to be groundless has been held not to be a sufficient reason for entering a caution against release¹².

1 As to Admiralty claims in rem see PARA 158 et seq.

As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 As to arrest see PARA 161 et seq.

3 As to sale see PARA 178.

4 CPR 61.8(2) (CPR Pt 61 added by SI 2001/4015). The request for a caution against release must be in the form set out in the practice direction (ie *Practice Direction--Admiralty Claims* PD 61: see note 1): see CPR 61.8(2) (as so added). Accordingly, the request for a caution against release must be in Form ADM11 (Request for caution against release): *Practice Direction--Admiralty Claims* PD 61 para 7.1. As to the filing of documents in the Admiralty and Commercial Court Registry, and as to the Admiralty and Commercial Court Registry itself, see PARA 142. As to the procedure to be followed when a request for a caution against release must be filed but the Registry is closed see the Admiralty and Commercial Courts Guide para N7.4-7.10. As to the Admiralty and Commercial Courts Guide generally see PARAS 91 note 3, 157 note 1.

5 CPR 61.8(3) (as added: see note 4); *Practice Direction--Admiralty Claims* PD 61 para 7.2. As to the meaning of 'Register' for these purposes see PARA 161 note 7. The Register is open for inspection when the Admiralty and Commercial Registry is open: *Practice Direction--Admiralty Claims* PD 61 para 7.3. A caution entered in the Register under CPR 61.8 is known as a 'caution against release' for the purposes of CPR Pt 61: CPR 61.1(2)(h) (as so added).

6 This is because normally all persons who have entered cautions against release must give consent to any release: see CPR 61.8(4); and PARA 175.

- 7 See CPR 61.8(4); and PARA 175.
- 8 le under CPR 61.8 (see PARA 164 et seq): see CPR 61.8(5) (as added: see note 4).
- 9 CPR 61.8(5) (as added: see note 4).
- 10 CPR 61.8(6) (as added: see note 4).
- 11 As to the provision of security see PARAS 171-172.
- 12 *The Don Ricardo* (1880) 5 PD 121.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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174 Release where there is a caution against release or payment out

NOTE 4--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para N7.4-N7.10.

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175. Obtaining release from arrest.

Property will be released from arrest¹ if:

- 292 (1) it is sold² by the Admiralty Court³;
- 293 (2) the Admiralty Court orders release⁴ on an application made by any party⁵;
- 294 (3) the arresting party and all persons who have entered cautions against release⁶ file a request for release⁷; or
- 295 (4) any party files a request for release⁸ (which contains an undertaking to pay the fees of, and all expenses incurred by, the Admiralty Marshal⁹) and that party consents to the release of the arresting party and all persons who have entered cautions against release¹⁰.

Any request for the withdrawal of a caution against release must be in the prescribed form¹¹.

1 le pursuant to an Admiralty claim in rem. As to Admiralty claims in rem see PARA 158 et seq; and as to arrest see PARA 161 et seq.

As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 As to sale see PARA 178.

3 CPR 61.8(4)(a) (CPR Pt 61 added by SI 2001/4015).

4 The court has a discretion to order release and may consider factors such as the convenience of the parties and the risk of deterioration of the vessel: see *The Gay Tucan* [1968] 3 All ER 819, [1969] 1 WLR 163, [1968] 2 Lloyd's Rep 425. The court may order a release even if there is a caution against release: see PARA 174.

In *The Golden Trader* [1975] QB 348, [1974] 2 All ER 686, where the proceedings had been stayed under the Arbitration Act 1950 s 4(2) (repealed: see now the Arbitration Act 1996 s 9 (power to stay proceedings brought in breach of an arbitration agreement) (see **ARBITRATION** vol 2 (2008) PARA 1222)), an order for release was made. On the application for the release of a vessel held as security for a claim in arbitration, the court will only order the release on the provision of sufficient security to cover the amount of the claim, plus interest and costs: *The Bazias* 3 [1993] QB 673, [1993] 2 All ER 964, CA. In *The Rena K* [1979] QB 377, [1979] 1 All ER 397, an order was made but alternative security had to be provided because the stay was unlikely to be the end of the matter. In *The Tuyuti* [1984] QB 838, [1984] 2 All ER 545, CA, the arrest was continued, as it was shown that any arbitration award made was unlikely to be satisfied.

Under the Civil Jurisdiction and Judgments Act 1982 s 26 (see PARA 96), the court is at liberty if it thinks it appropriate to order the security to be preserved and made available to meet a judgment in foreign proceedings: *The Nordglint* [1988] 1 QB 183, [1988] 2 All ER 531, [1987] 2 Lloyd's Rep 470. For cases under the Merchant Shipping Act 1995 s 185, Sch 7 (releases where security previously given) see PARA 176.

5 CPR 61.8(4)(b) (as added: see note 3).

6 As to cautions against release see PARA 174.

7 CPR 61.8(4)(c) (as added: see note 3). The request for release must be in the form set out in the practice direction (ie *Practice Direction--Admiralty Claims* PD 61: see note 1): see CPR 61.8(4)(c) (as so added). Accordingly, the request for release under CPR 61.8(4)(c) must be in Form ADM12 (Request and undertaking for release): *Practice Direction--Admiralty Claims* PD 61 para 7.4. As to the filing of documents in the Admiralty and Commercial Court Registry, and as to the Admiralty and Commercial Court Registry itself, see PARA 142. As to the procedure to be followed in relation to release from arrest when the Registry is closed see the Admiralty and Commercial Courts Guide para N11.1-11.4. As to the Admiralty and Commercial Courts Guide generally see PARAS 91 note 3, 157 note 1.

8 It is in the form set out in *Practice Direction--Admiralty Claims* PD 61: see CPR 61.8(4)(d). Accordingly, the request for release under CPR 61.8(4)(d) must be in Form ADM12 (Request and undertaking for release): *Practice Direction--Admiralty Claims* PD 61 para 7.4. See note 7.

9 See CPR 61.8(4)(d); and Form ADM12 (Request and undertaking for release). As to the Admiralty Marshal see PARA 160 note 6. Where, in CPR 61 or in *Practice Direction--Admiralty Claims* PD 61, any undertaking to the Marshal is required it must be given in writing and to his satisfaction or in accordance with such other arrangements as he may require: *Practice Direction--Admiralty Claims* PD 61 para 14.1. Where any party is dissatisfied with a direction given by the Marshal in this respect he may apply to the Admiralty Registrar for a ruling: *Practice Direction--Admiralty Claims* PD 61 para 14.2. As to the Admiralty Registrar see PARA 140. As to recovery from the proceeds of sale of sums paid to the Admiralty Marshal by an arresting party see *The Falcon* [1981] 1 Lloyd's Rep 13; *The World Star* [1987] 1 Lloyd's Rep 452.

10 CPR 61.8(4)(d) (as added: see note 3).

11 *Practice Direction--Admiralty Claims* PD 61 para 7.5. Any request for the withdrawal of a caution against release must be in Form ADM12A (Request for withdrawal of caution against release): see *Practice Direction--Admiralty Claims* PD 61 para 7.5.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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175 Obtaining release from arrest

NOTE 7--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para N11.1-N11.4.

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176. Release where security previously given.

Where a ship¹ or other property is arrested² within the jurisdiction of any state which is a party to the Convention on Limitation of Liability for Maritime Claims³, and a limitation fund has been constituted⁴ by the person alleged to be liable for the claim in respect of which the arrest is made, or security has been given to prevent, or obtain release from, arrest, the court or other competent authority of such state may order release of the ship or other property⁵. Such release must be ordered if the limitation fund has been constituted:

- 296 (1) at the port where the occurrence took place, or if it took place out of port, at the first port of call thereafter⁶;
- 297 (2) in respect of claims for loss of life or personal injury at the port of disembarkation⁷;
- 298 (3) in respect of damage to cargo at the port of discharge⁸; or
- 299 (4) in the state where the arrest is made⁹.

Where a release is so ordered, the applicant is deemed to have submitted to the jurisdiction of the court to adjudicate on the claim for which the ship or property was arrested¹⁰.

Where a limitation fund has been constituted, any person having made a claim against the fund is barred from exercising any right in respect of such a claim against any other assets of a person by or on whose behalf the fund has been constituted¹¹.

The above rules apply only if the claimant may bring a claim against the limitation fund before the court administering that fund and the fund is actually available and freely transferable in respect of that claim¹².

1 As to the meaning of 'ship' for these purposes see PARA 229.

2 I.e. pursuant to an Admiralty claim in rem. As to Admiralty claims in rem see PARA 158 et seq; and as to arrest see PARA 161 et seq.

As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

3 I.e. the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; Misc 31 (1978); Cmnd 7035), implemented by the Merchant Shipping Act 1979 s 17, Sch 4 (repealed) (see now the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I; and PARA 1042 et seq). An Order in Council made for the purposes of Sch 7 Pt II para 13 and declaring that any state specified in the Order is a party to the Convention on Limitation of Liability for Maritime Claims is, subject to the provisions of any subsequent Order made for those purposes, conclusive evidence that the state is a party to the Convention: Merchant Shipping Act 1995 Sch 7 Pt II para 13 (substituted by SI 1998/1258). Accordingly, see the Limitation of Liability for Maritime Claims (Parties to Convention) Order 1986, SI 1986/2224, which has effect as if made under the Merchant Shipping Act 1995 Sch 7 Pt II para 13, and which specifies the states being parties to the Convention and the territories in

respect of which they are such a party: see the Limitation of Liability for Maritime Claims (Parties to Convention) Order 1986, SI 1986/2224, art 3, Schedule.

4 See pursuant to the Merchant Shipping Act 1995 Sch 7 Pt I art 11 (as to which see PARA 1053): see Sch 7 Pt I art 13 para 2; and PARA 1055.

5 See the Merchant Shipping Act 1995 Sch 7 Pt I art 13 para 2; and PARA 1055. The power of the court is discretionary, but should be exercised unless there are substantial reasons to the contrary: *The Putbus* [1969] P 136 at 151, [1969] 2 All ER 676 at 680, [1969] 1 Lloyd's Rep 253 at 257, CA, per Lord Denning MR. It has been suggested that this power does not apply until a limitation decree is actually granted: *Bouygues Offshore SA v Caspian Shipping Co (Nos 1, 3, 4 and 5)* [1998] 2 Lloyd's Rep 461 at 473, CA, obiter per Sir John Knox. However, see *The Bowbelle* [1990] 3 All ER 476, [1990] 1 WLR 1330. As to limitation decrees see PARA 198 et seq.

6 See the Merchant Shipping Act 1995 Sch 7 Pt I art 13 para 2(a); and PARA 1055.

7 See the Merchant Shipping Act 1995 Sch 7 Pt I art 13 para 2(b); and PARA 1055.

8 See the Merchant Shipping Act 1995 Sch 7 Pt I art 13 para 2(c); and PARA 1055.

9 See the Merchant Shipping Act 1995 Sch 7 Pt I art 13 para 2(d); and PARA 1055.

10 See the Merchant Shipping Act 1995 Sch 7 Pt II para 10; and PARA 1055.

11 See the Merchant Shipping Act 1995 Sch 7 Pt I art 13 para 1; and PARA 1055.

12 See the Merchant Shipping Act 1995 Sch 7 Pt I art 13 para 3; and PARA 1055.

UPDATE

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177. Statement of value and appraisalment.

In cases where the value of the arrested property is important¹, the value of the property should be agreed or a statement of value obtained from a relevant person before release². If it is not possible to agree the value or to obtain such a statement, an application for the property's appraisalment may be made to the court³. Without previous challenge, the statement normally cannot be contradicted by evidence at the hearing, nor is the deponent allowed to be cross-examined on it⁴. If the claimant considers the stated value to be incorrect, his proper course is to enter a caution against release⁵ and obtain an order from the judge or the Admiralty Registrar for an appraisalment by the Admiralty Marshal to ascertain the correct value⁶. Normally, an appraisalment by the Admiralty Marshal or his substitute is conclusive⁷, but if there appear to be special reasons for so doing, the judge may direct a further appraisalment or may himself vary the appraised value at the hearing⁸. The costs of the appraisalment are in the discretion of the court, but where the appraised value is considerably more than the value given in the statement of value, the costs of the appraisalment are usually ordered to be borne by the defendants⁹.

1 Eg where cargo has been arrested for freight only, and in salvage claims. As to arrest see PARA 161 et seq; and as to the extent of Admiralty jurisdiction regarding salvage claims see PARA 113 et seq.

2 The statement should not be made on information and belief, but by a person having actual knowledge of the value: see *The Orangemoor* (1915) 31 TLR 190.

3 An application for an order for the appraisalment of a ship may be made in a claim in rem at any stage by any party: see CPR 61.10(1); and PARA 178.

4 *The Hanna* (1877) 3 Asp MLC 505. A bona fide mistake can, however, be rectified even after decree: *The James Armstrong* (1875) LR 4 A & E 380, 3 Asp MLC 46.

5 As to cautions against release see PARA 174.

6 As to the Admiralty Marshal see PARA 160 note 6; and as to the Admiralty Registrar see PARA 140. An order for appraisalment, as opposed to an order for appraisalment and sale (as to which see PARA 178 et seq), is rare; in practice, values are agreed between the solicitors for the parties without the need for an order for appraisalment or even a statement of value. In *The Gay Tucan* [1968] 3 All ER 819, [1969] 1 WLR 163, [1968] 2 Lloyd's Rep 245, however, the release of a yacht was ordered in a possession action subject to bail being given for the value which was to be determined by appraisalment.

7 *The San Onofre* [1917] P 96 (where it was held that the Marshal's valuation, based on the ship's market value, was properly reached, the contractual relations between owners and charterers being immaterial for purposes of appraisalment); but see *The Castor* [1932] P 142, where it was held that the earning power under a charterparty should be taken into account.

8 *The Venus (cargo ex)* (1866) LR 1 A & E 50; *The Georg* [1894] P 330; *The Hohenzollern* [1906] P 339; and see *The Castor* [1932] P 142.

9 *The Paul* (1866) LR 1 A & E 57.

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(g) Survey, Appraisalment or Sale of Ship subject to a Claim in rem

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

178. Appraisalment and sale of ship by court.

An application for an order for the survey, appraisalment or sale of a ship may be made in a claim in rem¹ at any stage by any party². If the court makes an order for sale³, it may set a time within which notice of claims against the proceeds of sale must be filed and the time and manner in which such notice must be advertised⁴. Any party with a judgment against the property or proceeds of sale may at any time after such a time⁵ apply to the court for the determination of priorities⁶. Unless the Admiralty judge orders otherwise, a determination of priorities may only be made by the Admiralty judge⁷.

Any application to the court concerning either the sale of the property under arrest or the proceeds of sale of property sold by the court must be heard in public and the application notice must be served on all parties to the claim, all persons who have requested cautions against release⁸ with regard to the property or the proceeds of sale, and the Admiralty Marshal⁹.

Payment out of the proceeds of sale will be made only to judgment creditors and either in accordance with the determination of priorities or as the court orders¹⁰. So long as a fund remains in court, it is the court's duty to see that it is paid to the proper recipients; thus an order for priorities may be varied at any time before payment out, on application by an interested party¹¹. Payment out may nevertheless be ordered, even if other claimants are known to exist, if they have delayed excessively in establishing their claims¹².

1 As to Admiralty claims in rem see PARA 158 et seq; and as to arrest see PARA 161 et seq.

As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 CPR 61.10(1) (CPR Pt 61 added by SI 2001/4015). See *The Kathleen* (1874) LR 4 A & E 269 at 271; *The Hercules* (1885) 11 PD 10; *The Westport* [1965] 2 All ER 167, [1965] 1 WLR 796, [1965] 1 Lloyd's Rep 547. See also *The Myrto* [1977] 2 Lloyd's Rep 243 (order made owing to the expense of a prolonged arrest); and *Hobbs, Savill & Co Ltd v The Vasilis (Owners), Albaron Bay Corp* [1972] 1 Lloyd's Rep 51 (permission was given to mortgagees to pay the master and crew for repatriation to enable the sale of the ship). As to liability for costs of discharging cargo not subject to order for sale see *The Myrto* [1978] 1 Lloyd's Rep 11, CA; *The Jogoo* [1981] 3 All ER 634, [1981] 1 WLR 1376, [1981] 1 Lloyd's Rep 513; *The Myrto (No 2)* [1984] 2 Lloyd's Rep 341. As to statements of value that may be agreed before release see PARA 177.

3 Unless the court orders otherwise, an order for sale must be in Form ADM14 (Order for sale of a ship): *Practice Direction--Admiralty Claims* PD 61 para 9.2. An order for sale before judgment may only be made by the Admiralty judge: *Practice Direction--Admiralty Claims* PD 61 para 9.3. As to Admiralty judges see PARA 140.

The Admiralty Marshal may choose one or more experienced persons to appraise the vessel and certify its true value in writing: see Form ADM14 para (2). He must sell the vessel for the highest price that can be obtained for it but he must not sell for less than the certified appraised value without an order of court: see Form ADM14 para (3). On completion of the sale the Marshal must pay the proceeds of sale into court and must countersign and file a certificate of value together with an account of his fees and expenses: see Form ADM14 paras (4), (5). Permission of the court should be obtained if any unusual item of expenditure is to be charged: see *The Westport (No 2)* [1965] 2 All ER 447, [1965] 1 WLR 871 (repairs needed to put ship in working order); *The Queen of the South* [1968] P 449, [1968] 1 All ER 1163, [1968] 1 Lloyd's Rep 182 (dock dues). As to payment of fees for a survey carried out by a classification society see *The Honshu Gloria* [1986] 2 Lloyd's Rep 63. As to the Admiralty Marshal see PARA 160 note 6.

The Admiralty Marshal may, if he thinks fit, offer for sale and sell the property for a price in a foreign currency: *The Halcyon the Great* [1975] 1 All ER 882, [1975] 1 WLR 515. When proceeds of sale are paid into court by the Admiralty Marshal, and such proceeds are in a foreign currency, the funds must be placed on one day call interest bearing account unless the court orders otherwise: *Practice Direction--Admiralty Claims* PD 61 para 9.5. Unless made at the same time as an application for sale (or other prior application) an application to place foreign currency on longer term deposit may be made to the Admiralty Registrar: *Practice Direction--Admiralty Claims* PD 61 para 9.6. Notice of the placement of foreign currency in an interest bearing account must be given to all parties interested in the fund by the party who made the application under para 9.6: *Practice Direction--Admiralty Claims* PD 61 para 9.7. Any interested party who wishes to object to the mode of investment of foreign currency paid into court may apply to the Registrar for directions: *Practice Direction--Admiralty Claims* PD 61 para 9.8. As to the Admiralty Registrar see PARA 140.

4 CPR 61.10(2) (as added: see note 2). As to the filing of documents with the Admiralty and Commercial Court Registry see PARA 142. All claims against the property are transferred to the fund in court: see *The Queen of the South* [1968] P 449, [1968] 1 All ER 1163, [1968] 1 Lloyd's Rep 182. It seems, however, that this cannot apply to a dock authority's statutory right of retention for dock dues: *The Emilie Millon* [1905] 2 KB 817, CA; *The Queen of the South*. See also *The Freightline One* [1986] 1 Lloyd's Rep 266.

5 The time referred to in CPR 61.10(2) (see the text and notes 3-4): see CPR 61.10(3) (as added: see note 2).

6 CPR 61.10(3) (as added: see note 2). An application notice under CPR 61.10(3) must be served on all persons who have filed a claim against the property: CPR 61.10(4) (as so added). In cases in which property has been arrested or there is a fund in court, it is usual for any judgment in favour of a claimant to be expressed to be without prejudice to other claims against the vessel, and reserving all questions as to the priority of such claims: see *The Africano* [1894] P 141 at 150 per Sir Francis H Jeune. The application to the court for the determination of priorities may be dealt with at the same time as an application for payment out: *The Westport (No 4)* [1968] 2 Lloyd's Rep 559. As to claims which the claimant is entitled to bring in priority to all other claims on the fund see *The World Star* [1987] 1 Lloyd's Rep 452. See also *The Jogoo* [1981] 3 All ER 634, [1981] 1 WLR 1376, [1981] 1 Lloyd's Rep 513. As to priority between master and crew see *The Royal Wells* [1985] QB 86, [1984] 3 All ER 193, [1984] 2 Lloyd's Rep 255. As to subrogation of the mortgagees to the rights and priorities of the crew see *The Berostar* [1970] 2 Lloyd's Rep 403; *Hobbs, Savill & Co Ltd v The Vasilis (Owners), Albaron Bay Corp* [1972] 1 Lloyd's Rep 51. As to recovery of the costs of the arrest as a first priority charge see *The Falcon* [1981] 1 Lloyd's Rep 13.

7 *Practice Direction--Admiralty Claims* PD 61 para 9.4.

8 As to the entry of a caution against arrest see PARA 166.

9 *Practice Direction--Admiralty Claims* PD 61 para 9.1.

10 CPR 61.10(5) (as added: see note 2).

11 *The Fairport (No 4)* [1967] 2 All ER 914n, [1967] 1 WLR 964, [1967] 1 Lloyd's Rep 602.

12 *The Leoborg (No 2)* [1963] 2 Lloyd's Rep 268 and 441.

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(h) Claims in rem etc against the Crown

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

179. Proceedings against the Crown.

Nothing in the Crown Proceedings Act 1947¹ authorises proceedings in rem² in respect of any claim against the Crown, or the arrest³, detention or sale of any of Her Majesty's ships or aircraft⁴, or of any cargo or other property belonging to the Crown⁵. Nor does anything in the Crown Proceedings Act 1947 give to any person any lien on such ships, aircraft, cargo or property⁶.

Where proceedings in rem have been instituted against any such ship, aircraft, cargo or other property, an application may be made to the court by the claimant or the Crown, and if the court is satisfied that the proceedings were instituted by the claimant in the reasonable belief that the ship, aircraft, cargo or other property did not belong to the Crown, it may make an order that the proceedings be treated as if they were in personam, duly instituted against the Crown in accordance with the Crown Proceedings Act 1947⁷.

1 As to the Crown Proceedings Act 1947 generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 382; and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 102 et seq.

2 As to Admiralty claims in rem see PARA 158 et seq.

3 As to arrest see PARA 161 et seq.

4 As to the meanings of 'Her Majesty's ships' and 'Her Majesty's aircraft' see the Crown Proceedings Act 1947 s 38; and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 103.

5 Crown Proceedings Act 1947 s 29(1). See also the Supreme Court Act 1981 s 24(2)(c); and PARA 85.

6 Crown Proceedings Act 1947 s 29(1). As to maritime liens generally see PARA 1014 et seq.

7 See the Crown Proceedings Act 1947 s 29(2). Such an order as is mentioned in the text may be on such terms as the court thinks just, and such consequential orders may be made as the court thinks expedient: s 29(2). As to Admiralty claims in personam ('other claims') generally see PARA 186 et seq.

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(B) COMMENCEMENT OF COLLISION CLAIMS

(a) *The Claim Form and Service*

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

180. Jurisdiction of the court in relation to a collision claim.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction in relation to any action to enforce a claim for damage, loss of life or personal injury arising out of²:

- 300 (1) a collision between ships³; or
- 301 (2) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships⁴; or
- 302 (3) non-compliance, on the part of one or more of two or more ships, with the collision regulations⁵.

The court is specifically precluded by statute from entertaining any claim in personam⁶ under heads (1) to (3) above unless some connection can be established between the claim and England or Wales⁷ and unless any foreign proceedings previously brought by the claimant against the defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end⁸.

A party who wishes to dispute the court's jurisdiction in any claim under heads (1) to (3) above (a 'collision claim')⁹ must make an application¹⁰ within two months after filing his acknowledgment of service¹¹.

¹ As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

² Supreme Court Act 1981 s 20(1)(b), (3)(b). As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the

Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

3 Supreme Court Act 1981 s 20(1)(b), (3)(b)(i). As to the meaning of 'ship' for these purposes see PARA 85 note 7.

4 Supreme Court Act 1981 s 20(1)(b), (3)(b)(ii).

5 Supreme Court Act 1981 s 20(1)(b), (3)(b)(iii). As to the meaning of 'collision regulations' for these purposes see PARA 94 note 7.

6 Claims in personam are now referred to as 'other claims': see *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186 et seq. As to the origin of claims in personam see PARA 84; and as to claims in personam generally see PARA 92 et seq.

7 As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

8 See the Supreme Court Act 1981 s 22(1), (3); and PARA 94.

9 As to the meaning of 'collision claim' for these purposes see PARA 91 note 12. CPR 61.4 applies to collision claims: CPR 61.4(1) (CPR Pt 61 added by SI 2001/4015).

10 Ie under CPR Pt 11 (as to which see **CIVIL PROCEDURE** vol 11 (2009) PARA 206): see CPR 61.4(4) (as added: see note 9).

11 CPR 61.4(4) (as added: see note 9). As to acknowledgment of service in collision claims see PARA 181.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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181. The claim form and acknowledgment of service in collision claims.

A collision claim¹ is begun by issuing a claim form which need not contain or be followed by particulars of claim². However, an acknowledgment of service must be filed³.

A claim form in a collision claim may not be served out of the jurisdiction unless:

- 303 (1) it is an action in personam to enforce a claim to which the relevant provisions of the Supreme Court Act 1981 apply⁴; or
- 304 (2) the defendant has submitted to (or agreed to submit to) the jurisdiction of the court⁵,

and the court gives permission⁶. Where permission to serve a claim form out of the jurisdiction is given, the court will specify the period within which the defendant may file an acknowledgment of service and, where appropriate, a collision statement of case⁷.

1 As to the meaning of 'collision claim' for these purposes see PARA 91 note 12. CPR 61.4 applies to collision claims: CPR 61.4(1) (CPR Pt 61 added by SI 2001/4015). As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 CPR 61.4(2) (as added: see note 1). Accordingly, CPR 7.4 (particulars of claim) (see **CIVIL PROCEDURE** vol 11 (2009) PARA 123) does not apply to collision claims: see CPR 61.4(2) (as so added). The procedure set out in the Admiralty and Commercial Courts Guide paras B3.3 (statement of value), B3.7-B3.11 (statement of truth, trial without service, interest, service when registry is closed), B6.4-B6.6 (applications for extension of time, certificate of service) applies to collision claims commenced in rem: see paras N4.2, N5.1. Where a collision claim is not commenced in rem, the general procedure applicable to claims proceeding in the Commercial List (ie paras B1.1-B12.5) applies: see para N5.2. As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1.

3 CPR 61.4(3) (as added: see note 1). As to the filing of documents with the Admiralty and Commercial Court Registry see PARA 142.

4 ie unless the case falls within the Supreme Court Act 1981 s 22(2)(a)-(c) (as to which see PARA 94): see CPR 61.4(7)(a) (as added: see note 1).

5 CPR 61.4(7)(b) (as added: see note 1).

6 CPR 61.4(7) (as added: see note 1). The court must give permission as mentioned in the text in accordance with CPR Pt 6 Section III (CPR 6.17-6.31) (as to which see **CIVIL PROCEDURE** vol 11 (2009) PARAS 156, 168 et seq): see CPR 61.4(7) (as so added). Service of a claim form out of the jurisdiction in a collision claim (other than a claim in rem) is permitted in the circumstances identified in CPR 61.4(7) only and the procedure set out in the Admiralty and Commercial Courts Guide App 15 (Service out of the jurisdiction: related practice) should be adapted accordingly: Admiralty and Commercial Courts Guide para N5.3.

7 CPR 61.4(8) (as added: see note 1). As to collision statements of case see PARA 182 et seq. Before the coming into force of CPR Pt 61 (ie before 25 March 2002: see the Civil Procedure (Amendment No 5) Rules 2001, SI 2001/4015, r 1), a collision statement of case was known as a preliminary act and the law relating to preliminary acts continues to apply to collision statements of case: *Practice Direction--Admiralty Claims* PD 61 para 4.5; Admiralty and Commercial Courts Guide para N5.4. The preparation and filing by the parties of a collision statement of case is a particular feature of a collision action: see the Admiralty and Commercial Courts Guide para N5.4.

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79-228 Admiralty Jurisdiction of the High Court

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181 The claim form and acknowledgment of service in collision claims

NOTE 2--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) paras B4.3, B4.7-B4.10, B2.4, B7.4-B7.6, N4.2, N5.1, B1.1-B13.5, N5.2.

NOTE 6--CPR 61.4(7) amended by SI 2008/2178. See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para N5.3, App 15.

NOTE 7--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para N5.4.

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(b) Collision Statement of Case

182. Filing a collision statement of case.

In any collision claim¹, every party must, within two months after the defendant files the acknowledgment of service² or (where the defendant makes an application disputing the jurisdiction or the exercise by the court of its jurisdiction)³ within two months after the defendant files the further acknowledgment of service, file at the court a completed collision statement of case⁴. When he files his collision statement of case, each party must give notice to every other party that he has done so⁵; and, within 14 days after the last collision statement of case is filed, each party must serve a copy of his collision statement of case on every other party⁶.

1 Ie except in the case of a collision between a ship and a landing stage: see *The Craighall* [1910] P 207, CA. As to the meaning of 'collision claim' for these purposes see PARA 91 note 12. CPR 61.4 applies to collision claims: CPR 61.4(1) (CPR Pt 61 added by SI 2001/4015). As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 As to acknowledgment of service in collision claims see PARA 181.

3 Ie under CPR Pt 11 (as to which see **CIVIL PROCEDURE** vol 11 (2009) PARA 206); see CPR 61.4(5) (as added: see note 1).

4 CPR 61.4(5) (as added: see note 1). As to the filing of documents in the Admiralty and Commercial Court Registry see PARA 142.

The completed collision statement of case must be in the form specified in the practice direction (ie *Practice Direction--Admiralty Claims* PD 61: see note 1): see CPR 61.4(5) (as so added). Accordingly, a collision statement of case must be in Form ADM3 (Collision statement of case): *Practice Direction--Admiralty Claims* PD 61 para 4.1. As to the contents required of a collision statement of case see PARA 183. As to the court's discretion, using its general powers of management, to dispense with collision statements of case see PARA 184; and as to the effect of default in filing a collision statement of case see PARA 192.

5 *Practice Direction--Admiralty Claims* PD 61 para 4.3.

6 *Practice Direction--Admiralty Claims* PD 61 para 4.4.

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005

s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(iii) Admiralty Claims except Limitation Claims/B. COMMENCEMENT OF CLAIMS/(B) Commencement of Collision Claims/(b) Collision Statement of Case/183. Contents of collision statement of case.

183. Contents of collision statement of case.

A collision statement of case¹ must be in the required form² and be verified by a statement of truth³. Accordingly, a collision statement of case must contain answers to the following questions⁴:

- 305 (1) the names of the ships which came into collision and their ports of registry⁵;
- 306 (2) the length, breadth, gross tonnage, horsepower and draught at the material time of the ship, and the nature and tonnage of any cargo carried by the ship⁶;
- 307 (3) the date and time (including the time zone) of the collision⁷;
- 308 (4) the place of the collision⁸;
- 309 (5) the direction and force of the wind⁹;
- 310 (6) the state of the weather¹⁰;
- 311 (7) the state, direction and force of the tidal or other current¹¹;
- 312 (8) the position, the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier¹²;
- 313 (9) the lights or shapes, if any, carried by the ship¹³;
- 314 (10) the distance and bearing of the other ship if and when her echo was first observed by radar¹⁴; and the distance, bearing and approximate heading of the other ship when first seen¹⁵;
- 315 (11) what light or shape or combination of lights or shapes, if any, of the other ship was first seen¹⁶;
- 316 (12) what other lights or shapes or combinations of lights or shapes, if any, of the other ship were subsequently seen before the collision, and when¹⁷;
- 317 (13) what alterations, if any, were made to the course and speed of the ship after the earlier of the two times referred to in head (8) above up to the time of the collision, and when, and what measures, if any, other than alterations of course or speed, were taken to avoid the collision, and when¹⁸;
- 318 (14) the heading of the ship, the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact¹⁹;
- 319 (15) what sound signals, if any, were given, and when²⁰;
- 320 (16) what sound signals, if any, were heard from the other ship, and when²¹.

The collision statement of case must also contain a statement of any other facts or matters upon which the party filing the collision statement of case relies, a statement of all allegations of negligence or other fault on which the party filing the collision statement of case relies, and a statement of the remedy which the party filing the collision statement of case claims²².

1 As to the requirement to file a collision statement of case see PARA 182.

2 Ie in the form set out in the practice direction (ie *Practice Direction--Admiralty Claims* PD 61): see CPR 61.4(6) (CPR Pt 61 added by SI 2001/4015). Accordingly, a collision statement of case must be in Form ADM3 (Collision statement of case) and must contain the answers and statements specified in *Practice Direction--Admiralty Claims* PD 61 para 4.2 (as to which see the text and notes 4-22): see *Practice Direction--Admiralty Claims* PD 61 paras 4.1, 4.2.

CPR 61.4 applies to collision claims: CPR 61.4(1) (as so added). As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

3 CPR 61.4(6) (as added: see note 2). Form ADM3 (Collision statement of case) (as to which see note 4) contains a pro forma statement of truth: see Form ADM3 (Collision statement of case). As to statements of truth generally see CPR Pt 22; and **CIVIL PROCEDURE** vol 11 (2009) PARA 613 et seq.

A statement of truth in a collision statement of case is a formal admission binding on the party making it and can only be departed from with the special leave of the court: see *The Seacombe, The Devonshire* [1912] P 21 at 59, CA, per Fletcher Moulton LJ; affd [1912] AC 634, HL (but the question of collision statements of case was not considered there). See also *The Lady Belle* [1933] P 275. Unless leave is given to admit evidence not in accordance with the collision statement of case, the court may hold the party to the statements in the collision statement of case: see *The Semiramis* [1952] 2 Lloyd's Rep 86 at 93.

4 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1). The text refers to questions that are set out in Form ADM3 (Collision statement of case) Pt 1: see *Practice Direction--Admiralty Claims* PD 61 para 4.2(1). Every party is required, so far as it is able, to provide full and complete answers to the questions contained in Form ADM3 (Collision statement of case) Pt 1, and the answers should descend to a reasonable level of particularity: Admiralty and Commercial Courts Guide para N5.6. If some of the required information is outside the party's knowledge, he must file the best collision statement of case that he can: *The El Oso* (1925) 133 LT 269; *The Graingers No 4* [1964] 3 All ER 705, [1964] 1 WLR 1474, [1964] 2 Lloyd's Rep 415. The answers to the questions contained in Form ADM3 (Collision statement of case) Pt 1 are treated as admissions made by the party answering the questions and leave to amend such answers will be granted only in exceptional circumstances: Admiralty and Commercial Courts Guide para N5.7. However, a party who files a defective collision statement of case may be ordered to amend it: *The Godiva* (1886) 11 PD 20. As to the principles applicable to the amendment of a collision statement of case see *The Topaz* [2003] EWHC 320 (Admlty) at [13], [2003] 2 Lloyd's Rep 19 at [13] per Gross J; and the Admiralty and Commercial Courts Guide para N5.7. As to the Admiralty and Commercial Courts Guide generally see PARAS 91 note 3, 157 note 1.

5 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 1.

6 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 2.

7 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 3.

8 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 4.

9 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 5.

10 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 6.

11 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 7.

12 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 8. Where a vessel was at anchor, the heading of the vessel should be stated: *The Macroom* (1927) 137 LT 418; *The Erna* (1927) 27 Ll L Rep 170.

13 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 9.

14 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 10(a).

15 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 10(b).

16 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 11.

17 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 12. Every change in the combination of lights seen should be mentioned: *The Monica* [1912] P 147.

18 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 13.

19 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 14.

20 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 15.

21 *Practice Direction--Admiralty Claims* PD 61 para 4.2(1), Form ADM3 Pt 1 art 16.

22 *Practice Direction--Admiralty Claims* PD 61 para 4.2(2); Form ADM3 Pt 2. The wording of Form ADM3 Pt 2 varies slightly in that a statement of 'the relief or remedy which the party filing the collision statement of case claims' is specified and a statement must be included to the effect that the information in Form ADM3 (Collision statement of case) Pt 1 is incorporated in Form ADM3 (Collision statement of case) Pt 2: see Form ADM3 (Collision statement of case) Pt 2. The provisions of the Admiralty and Commercial Courts Guide App 4 (statements of case) apply to Form ADM3 Pt 2 (but not to Form ADM3 Pt 1): Admiralty and Commercial Courts Guide para N5.5.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

183 Contents of collision statement of case

NOTE 4--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para N5.6-N5.7.

NOTE 22--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para N5.5, App 4.

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184. Power of court to dispense with collision statement of case.

The obligation to file a collision statement of case¹ lies not only on parties who are the owners or operators of the colliding vessels, but also upon all other parties involved in collision claims, such as a widow making a fatal accident claim² or a dock authority whose acts are alleged to be a cause of the collision³. Although, in the exercise of the court's general discretionary power, such other parties may be excused from the obligation⁴, the power is one which the court exercises only in exceptional circumstances⁵. The principle of mutuality applies, so that, if one party is excused, other parties will usually not be required to file a collision statement of case⁶.

1 As to the requirement to file a collision statement of case see PARA 182.

2 *Webster v Manchester, Sheffield and Lincolnshire Rly Co* [1884] WN 1, 5 Asp MLC 256n. See also *The El Oso* (1925) 133 LT 269 at 271.

3 *The Beaverford* [1960] 3 All ER 612, [1961] 1 WLR 793, [1960] 2 Lloyd's Rep 216.

4 As to the court's general powers of management in this regard see CPR 3.1(2)(m); and **CIVIL PROCEDURE** vol 11 (2009) PARA 247. See also *The John Boyne* (1877) 36 LT 29, 3 Asp MLC 341; *Armstrong v Gaselee* (1889) 22 QBD 250, 6 Asp MLC 353 (but note the comments on the headnote to that case in *The El Oso* (1925) 133 LT 269).

5 *The Beaverford* [1960] 3 All ER 612, [1961] 1 WLR 793, [1960] 2 Lloyd's Rep 216; *The Graingers No 4* [1964] 3 All ER 705, [1964] 1 WLR 1474, [1964] 2 Lloyd's Rep 415 (defendant who denied that any collision had occurred not excused).

6 *The El Oso* (1925) 133 LT 269; *The Grainger's No 4* [1964] 3 All ER 705, [1964] 1 WLR 1474, [1964] 2 Lloyd's Rep 415. A co-defendant in a multiple collision case cannot be compelled to file a collision statement of case except at the instance of the claimant, after the claimant has filed his act against that defendant: see *The Carlston, The Balcombe* [1926] P 82.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(iii) Admiralty Claims except Limitation Claims/B. COMMENCEMENT OF CLAIMS/(B) Commencement of Collision Claims/(c) Stay of Proceedings in Collision Claims in rem/185. Stay of proceedings in collision claims pending security for counterclaim.

(c) Stay of Proceedings in Collision Claims in rem

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

185. Stay of proceedings in collision claims pending security for counterclaim.

Where, in a collision claim¹ in rem, (the 'original claim'):

- 321 (1) either a Part 20 claim², or a cross claim in rem³ arising out of the same collision or occurrence is made⁴; and
- 322 (2) the party bringing the original claim has caused the arrest⁵ of a ship or has obtained security⁶ in order to prevent such arrest⁷, and the party bringing the Part 20 claim or cross claim is unable to arrest a ship or otherwise to obtain security⁸,

then the party bringing the Part 20 claim or cross claim may apply to the Admiralty Court to stay the original claim until sufficient security is given to satisfy any judgment that may be given in favour of that party⁹.

1 As to the meaning of 'collision claim' for these purposes see PARA 91 note 12. CPR 61.4 applies to collision claims: CPR 61.4(1) (CPR Pt 61 added by SI 2001/4015). As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 CPR 61.4(9)(a)(i) (as added: see note 1). As to 'Part 20 claims' in general see CPR 20.2; and **CIVIL PROCEDURE** vol 11 (2009) PARA 618 et seq.

3 CPR 61.4(9)(a)(ii) (as added: see note 1).

4 CPR 61.4(9)(a) (as added: see note 1).

5 As to arrest see PARA 161 et seq.

- 6 As to the provision of security see PARA 171 et seq.
- 7 CPR 61.4(9)(b)(i) (as added: see note 1).
- 8 CPR 61.4(9)(b)(ii) (as added: see note 1).
- 9 CPR 61.4(9) (as added: see note 1).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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(C) COMMENCEMENT OF CLAIMS IN PERSONAM ('OTHER CLAIMS')

186. Admiralty claims in personam to proceed generally in accordance with Commercial Court practice.

All Admiralty claims in personam¹ proceed in accordance with the practice and procedure of the Commercial Court², except for certain requirements that are imposed in relation to the claim form³ and the filing of a defence⁴, and subject to the provisions relating to limitation claims⁵ and to collision claims⁶.

1 As to the origin of claims in personam see PARA 84; and as to claims in personam generally see PARA 92 et seq. *Practice Direction--Admiralty Claims* PD 61 para 12 ('other claims') applies to Admiralty claims which, before the coming into force of CPR Pt 61 (ie before 25 March 2002: see the Civil Procedure (Amendment No 5) Rules 2001, SI 2001/4015, r 1), would have been called claims in personam: *Practice Direction--Admiralty Claims* PD 61 para 12.1. As to CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61 see note 2.

2 *Practice Direction--Admiralty Claims* PD 61 para 12.2. Accordingly, an Admiralty claim in personam will proceed in accordance with CPR Pt 58 (as to which see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq): see *Practice Direction--Admiralty Claims* PD 61 para 12.2. See also the Admiralty and Commercial Courts Guide paras B1-B12, N3.1. As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1.

As to the procedure that governs Admiralty claims generally, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. CPR Pt 58 (Commercial Court) applies generally to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

3 As to which see PARAS 187-188.

4 As to which see PARA 189.

5 Ie subject to the provisions of CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61 relating to limitation claims (as to which see PARA 194 et seq): see *Practice Direction--Admiralty Claims* PD 61 para 12.1.

6 *Practice Direction--Admiralty Claims* PD 61 para 12.1. The text refers to the provisions relating to collision claims which are contained in CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61 (as to which see PARA 180 et seq): see *Practice Direction--Admiralty Claims* PD 61 para 12.1.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

186 Admiralty claims in personam to proceed generally in accordance with Commercial Court practice

NOTE 2--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) paras B1-B13, N3.1.

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187. Service of claim form and acknowledgment of service where claim is in personam.

An Admiralty claim in personam¹ must be in the prescribed form². The claimant may be named or may be described in the claim form, but if not named there he must identify himself by name if requested to do so by any other party³. The defendant must also be named in the claim form⁴.

An Admiralty claim in personam must be served by the claimant⁵. Service within the jurisdiction⁶ is governed by the general rules applicable in other proceedings⁷, and acknowledgment of service is given in accordance with the general practice and procedure of the Commercial Court⁸.

1 Except for certain requirements that are imposed in relation to the claim form (see also PARA 188) and the filing of a defence (see PARA 189), all Admiralty claims in personam proceed in accordance with the practice and procedure of the Commercial Court: see PARA 186. As to the origin of claims in personam see PARA 84; and as to claims in personam generally see PARA 92 et seq. *Practice Direction--Admiralty Claims* PD 61 para 12 ('other claims') applies to Admiralty claims which, before the coming into force of CPR Pt 61 (ie before 25 March 2002: see the Civil Procedure (Amendment No 5) Rules 2001, SI 2001/4015, r 1), would have been called claims in personam: see *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186 note 1.

As to the procedure that governs Admiralty claims generally, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. CPR Pt 58 (Commercial Court) applies generally to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 *Practice Direction--Admiralty Claims* PD 61 para 12.3. Accordingly, the claim form must be in Form ADM1A (Claim Form (Admiralty claim)): see *Practice Direction--Admiralty Claims* PD 61 para 12.3.

3 *Practice Direction--Admiralty Claims* PD 61 para 12.4.

4 *Practice Direction--Admiralty Claims* PD 61 para 12.5.

5 *Practice Direction--Admiralty Claims* PD 61 para 12.3.

6 As to service out of jurisdiction see PARA 188. Vessels of the Royal Navy are deemed to be within the jurisdiction wherever they may actually be: *Seagrove v Parks* [1891] 1 QB 551, DC.

7 For the rules about service generally see CPR Pt 6; and **CIVIL PROCEDURE** vol 11 (2009) PARA 138 et seq. The rules in CPR Pt 6 apply to service of documents except where any other enactment, a rule in another Part of the rules or a Practice Direction makes a different provision or where the court orders otherwise: see CPR 6.1; and **CIVIL PROCEDURE** vol 11 (2009) PARA 138. See also the Admiralty and Commercial Courts Guide paras B1-B6, N7.1-7.3. As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1.

8 See the Admiralty and Commercial Courts Guide para B8; and see CPR 58.6 (as to which see **CIVIL PROCEDURE**).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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187 Service of claim form and acknowledgment of service where claim is in personam

NOTE 7--CPR Pt 6 substituted by SI 2008/2178. See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) paras B1-B7, N7.1-N7.3.

NOTE 8--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para B9.

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188. Service out of jurisdiction of claim form where claim is in personam.

The general rules governing service out of the jurisdiction¹ apply equally to Admiralty claims in personam².

Before issuing a claim form or seeking permission to serve out of the jurisdiction, it is necessary to consider whether the jurisdiction of the English courts is affected by the Civil Jurisdiction and Judgments Act 1982³. Where each claim in the claim form is a claim which the Court has by virtue of the Civil Jurisdiction and Judgments Act 1982 power to hear and determine, service of the claim form out of the jurisdiction may be effected without permission provided that the procedural requirements are satisfied⁴ and provided that the claim form is endorsed before issue with a statement that the court has power under the Act to hear and determine the claim against the defendant, and that no proceedings involving the same claim are pending between the parties in Scotland, Northern Ireland or another contracting or Regulation state⁵.

In cases where permission is required⁶, the general rules as to that mode of service apply⁷. Of most obvious relevance is the rule that permission to serve is required where the claim either is in the nature of salvage (and any part of the services took place within the jurisdiction)⁸ or is being made to enforce a claim under the Merchant Shipping Act 1995⁹. However, other rules of relevance in this context relate to cases where the claim is in respect of a tort committed within the jurisdiction¹⁰, where any person outside the jurisdiction is a necessary or proper party to a claim properly brought against some other person duly served within the jurisdiction¹¹, and where the claim is brought in respect of a contract which was either made within the jurisdiction, or made by or through an agent trading or residing within the jurisdiction, or is by its terms, or by implication, governed by English law¹². Where the applicant fails to show that his claim has a reasonable prospect of success, permission will not be granted for service out of the jurisdiction against another party; where there is a substantial question of fact in issue permission should be given; and where there is an exceptionally difficult and doubtful point of law permission may be given¹³.

1 ie CPR 6.17-31: see **CIVIL PROCEDURE** vol 11 (2009) PARAS 156, 168 et seq. See also *Practice Direction--Service out of the Jurisdiction* (2001) PD 6B; and EC Council Regulation 1348/2000 (OJ L160, 30.06.2000, p 37), the text of which is annexed thereto.

2 See the Admiralty and Commercial Courts Guide para B7.1-B7.2, App 15. Acknowledgment of service is given in accordance with the general practice and procedure of the Commercial Court: see the Admiralty and Commercial Courts Guide para B8; and CPR 58.6 (as to which see **CIVIL PROCEDURE**). As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1.

Except for certain requirements that are imposed in relation to the claim form (see also PARA 187) and the filing of a defence (see PARA 189), all Admiralty claims in personam proceed in accordance with the practice and procedure of the Commercial Court: see PARA 186. As to the origin of claims in personam see PARA 84; and as to claims in personam generally see PARA 92 et seq. *Practice Direction--Admiralty Claims* PD 61 para 12 ('other claims') applies to Admiralty claims which, before the coming into force of CPR Pt 61 (ie before 25 March 2002: see the Civil Procedure (Amendment No 5) Rules 2001, SI 2001/4015, r 1), would have been called claims in personam: see *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186 note 1. As to the procedure that governs Admiralty claims generally, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and

COURTS vol 10 (Reissue) PARA 615. CPR Pt 58 (Commercial Court) applies generally to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

3 As to cases under the Civil Jurisdiction and Judgments Act 1982 see PARAS 96-99.

4 As to the requirements of CPR 6.19: see **CIVIL PROCEDURE** vol 11 (2009) PARAS 168, 169.

5 See the Admiralty and Commercial Courts Guide App 15 para 1. As to the meanings of 'contracting state' and 'Regulation state' see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 65.

6 As to where cases fall within CPR 6.20: see **CIVIL PROCEDURE** vol 11 (2009) PARA 170.

7 See CPR 6.20; and **CIVIL PROCEDURE** vol 11 (2009) PARA 170.

8 As to salvage claims generally see PARAS 113 et seq, 876 et seq.

9 See CPR 6.20(17A); and **CIVIL PROCEDURE** vol 11 (2009) PARA 170. The text refers to enforcement of a claim under the Merchant Shipping Act 1995 s 153, s 154 or s 175 (oil pollution) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 443-444, 464); see CPR 6.20(17A); and **CIVIL PROCEDURE** vol 11 (2009) PARA 170.

10 See CPR 6.20(8); and **CIVIL PROCEDURE** vol 11 (2009) PARA 170.

11 See CPR 6.20(3); and **CIVIL PROCEDURE** vol 11 (2009) PARA 170.

12 See CPR 6.20(5); and **CIVIL PROCEDURE** vol 11 (2009) PARA 170.

13 *The Brabo* [1949] AC 326, [1949] 1 All ER 294, HL.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

188 Service out of jurisdiction of claim form where claim is in personam

TEXT AND NOTES--CPR Pt 6 substituted by SI 2008/2178.

NOTE 2--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) paras B8.1-B8.3, App 15, B9.

NOTE 5--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) App 15 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(iii) Admiralty Claims except Limitation Claims/C. PROCEDURE FOLLOWING SERVICE/(A) Particulars of Claim, Defence and Reply/189. Particulars of claim etc.

C. PROCEDURE FOLLOWING SERVICE

(A) PARTICULARS OF CLAIM, DEFENCE AND REPLY

189. Particulars of claim etc.

For the purposes of an Admiralty claim in rem¹, a collision claim² and an Admiralty claim in personam³, the general practice and procedure of the Commercial Court⁴ governs: (1) the form, content, serving and filing of particulars of claim⁵; (2) the form, content, serving and filing of a defence⁶; (3) the form, content, serving and filing of a reply⁷; and (4) amendments made to a statement of case⁸. A party may be ordered to supply further information to support any claim⁹. A counterclaim must be raised by a proceeding recognised by the rules of court for the purpose¹⁰, and it follows that unless he arrests the claimant's vessel, a defendant cannot set up a counterclaim before he has received the claimant's statement of case¹¹.

However, the court may order (either before or after the issue of a claim form) that the case is to proceed without the filing or service of particulars of claim or defence or of any other statement of case¹².

1 As to the origin of claims in rem see PARA 83; as to the jurisdiction of the Admiralty Court in relation to claims in rem see PARA 92 et seq; and as to commencing such a claim see PARA 158 et seq.

2 As to the meaning of 'collision claim' for these purposes see PARA 91 note 12. As to the jurisdiction of the Admiralty Court in relation to collision claims see PARA 180; and as to commencing such a claim see PARA 181 et seq.

3 As to the origin of claims in personam see PARA 84; as to claims in personam generally see PARA 92 et seq; and as to commencing such a claim see PARA 186 et seq.

4 As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. CPR Pt 58 (Commercial Court) applies generally to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the procedure that governs Admiralty claims generally, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

5 See the Admiralty and Commercial Courts Guide paras C1-C2. Section C of the Admiralty and Commercial Courts Guide applies in its entirety to Admiralty claims in personam (see para N3.1) and applies equally to claims in rem and collision claims except for paras C1.10 (effect of statement of case not verified by statement of truth) and C2.1(i) (period for serving particulars of claim) (see paras N3.1, N4.2-4.3, N5.1). As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1. As to the filing of documents with the Admiralty and Commercial Court Registry see PARA 142.

6 See the Admiralty and Commercial Courts Guide paras C1, C3. Any person who files a defence to a claim in personam must identify himself by name in the defence: *Practice Direction--Admiralty Claims* PD 61 para 12.6.

If a defendant wishes to raise a limitation of liability defence under the Merchant Shipping Act 1995 s 185 (as to which see PARA 195), this ought to be pleaded as a defence when there is only one claim made or apprehended:

see *The Mekhanik Evgrafov and Ivan Derbenev (No 2)* [1988] 1 Lloyd's Rep 330. In a salvage claim (as to which see PARA 113 et seq, and generally see PARA 876 et seq) where the defendant admits by his defence the facts alleged in the particulars of claim but challenges the inferences to be drawn from them, the claimant will not be allowed to call evidence as to the facts. The claimant may, however, put in the log of the defendant's vessel in support of the inference that the vessel was in danger: *The Woodarra* (1921) 38 TLR 160; followed in *The Cornish Rose* [1936] P 174, [1936] 2 All ER 805. Notice of intention to tender the log should be given to the other party so that he may be prepared with any other admissible document directed to the same issue: *The Cornish Rose*. See also *The Buteshire* [1909] P 170 (application for leave to put in the defendants' log in similar circumstances was refused); and *The Sandefjord* [1953] 2 Lloyd's Rep 789 (logs were admitted and a pilot who claimed for his personal services was allowed to give evidence).

The defence of tender before claim is rarely encountered in Admiralty proceedings but see *Davys v Richardson* (1888) 21 QBD 202, CA; and *The Slaney* [1951] 2 Lloyd's Rep 538 at 544-545 per Lord Merriman (tender before action of specified sum due under a towage contract).

7 See the Admiralty and Commercial Courts Guide paras C1, C4. See also Form ADM1C (Notes for defendant on replying to an admiralty claim form).

8 See the Admiralty and Commercial Courts Guide para C5. An amendment may introduce a new cause of action, even after a period of limitation has expired, if the court thinks it just to allow the amendment and the new cause of action arises out of the same facts, or substantially the same facts: see CPR 17.4; and **CIVIL PROCEDURE** vol 11 (2009) PARA 610. For the application of these rules to a salvage case see *The Katcher I* [1969] P 65, [1968] 3 All ER 344, [1968] 1 Lloyd's Rep 232.

9 Parties have been ordered to supply particulars of allegations as to defects in a vessel (*The Rory* (1882) 7 PD 117, CA), negligent navigation (*The Kanawha* (1913) 108 LT 433) and salvage services (*The Isis* (1883) 8 PD 227).

10 *The Gniezno* [1968] P 418, [1967] 2 All ER 738, [1967] 1 Lloyd's Rep 441. See also *The Saxicava* [1924] P 131, CA; *Impex Transport Aktieselskabet v AG Thames Holdings Ltd* [1982] 1 All ER 897, [1981] 1 WLR 1547, [1981] 2 Lloyd's Rep 566. Furthermore, limitation claims may only be brought by way of counterclaim with permission of the Admiralty Court: see PARA 196.

11 A warrant of arrest may be issued in connection with a counterclaim at any time after the claimant's claim form has been issued: see PARA 161. See also *The Gniezno* [1968] P 418, [1967] 2 All ER 738, [1967] 1 Lloyd's Rep 441. The defendant may at any time issue a claim of his own and thus commence a separate cross claim instead of a counterclaim. It is advisable to proceed by cross claim rather than to rely on the counterclaim procedure if the expiry of a time limit is imminent when proceedings are begun: see *The Fairplay XIV* [1939] P 57 at 61, 62 LI L Rep 108 at 110 per Sir Boyd Merriman.

Further proceedings on the counterclaim are generally similar to those in the original claim. In certain circumstances, the person bringing the counterclaim may apply to the court to stay the original claim: see CPR 61.4(9); and PARA 185. A defendant in a claim in rem may set up a counterclaim in personam: *The Clutha* (1876) 45 LJ 108; *The Newbattle* (1885) 10 PD 33, CA. The court has refused to strike out a counterclaim as embarrassing, although the claimants were foreigners who could not have been served with a summons, and the counterclaim could, if the claimants had so chosen, have been tried by a jury: *The Cheapside* [1904] P 339, CA. It is thought that this decision is unaffected by the requirements of the Supreme Court Act 1981 ss 20(2), 22 as the commencement of the original claim by the claimant is a submission to the jurisdiction which satisfies s 22(5) (see PARA 94). It appears that a counterclaim may be entertained by the court notwithstanding that it is not within the Admiralty jurisdiction of the High Court, as all jurisdiction vested in the High Court belongs to all the divisions alike: see the Supreme Court Act 1981 s 5(5); and **COURTS** vol 10 (Reissue) PARA 603. See also PARA 91. But note, however, that under the Civil Jurisdiction and Judgments Act 1982 s 2(2), Sch 1 art 6(3), in relation to a claimant domiciled in a contracting or Regulation state, the counterclaim must arise from the same contract or facts on which the original claim was based, in the court in which the original claim is pending (see PARA 96).

12 See the Admiralty and Commercial Courts Guide para B3.8; and CPR 58.11 (cited in **CIVIL PROCEDURE** vol 12 (2009) PARA 1539), although it is stated therein that the facility described in the text is to be used with caution.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act

1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

189 Particulars of claim etc

NOTE 5--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) paras C1-C2, N3.1, C1.7, C2.1(i), N3.1, N4.2-N4.3, N5.1.

NOTES 6-8--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009).

NOTE 12--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para B4.8.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(iii) Admiralty Claims except Limitation Claims/C. PROCEDURE FOLLOWING SERVICE/ (B) Judgment in Default/190. Judgment in default in claim in rem.

(B) JUDGMENT IN DEFAULT

190. Judgment in default in claim in rem.

In an Admiralty claim in rem¹ (other than a collision claim)² the claimant may obtain judgment in default of:

- 323 (1) an acknowledgment of service, but only if the defendant has not filed an acknowledgment of service and the time for doing so³ has expired⁴; and
- 324 (2) a defence, but only if a defence has not been filed and the relevant time limit for doing so has expired⁵.

An application for judgment in default⁶ in an in rem claim must be made by filing an application notice⁷, a certificate proving service of the claim form, and evidence proving the claim to the satisfaction of the court⁸. An application notice seeking judgment in default and, unless the court orders otherwise, all evidence in support, must be served on all persons who have entered cautions against release on the Register⁹.

The Admiralty Court may set aside or vary any judgment entered in pursuance of these provisions¹⁰. If, on the hearing of the application, the court is satisfied that the claim is well founded, it may give judgment for the claim, with or without a reference to the Admiralty Registrar¹¹ or district registrar, and may, at the same time, order the property against which the claim is brought to be appraised and sold¹² and the proceeds paid into court, or may make such order as it deems just in the circumstances¹³.

The decree in favour of the claimant's claim will usually be made without prejudice to other claims against the property, and reserving all questions as to the priority of such claims¹⁴.

1 As to the origin of claims in rem see PARA 83; as to the jurisdiction of the Admiralty Court in relation to claims in rem see PARA 92 et seq; and as to commencing such a claim see PARA 158 et seq.

As to the procedure that governs Admiralty claims generally, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies generally to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 As to the meaning of 'collision claim' for these purposes see PARA 91 note 12. As to judgment in default of filing a collision statement of case see PARA 192.

3 Ie as set out in CPR 61.3(4) (acknowledgment of service) (see PARA 168); see CPR 61.9(1)(a) (CPR Pt 61 added by SI 2001/4015).

4 CPR 61.9(1)(a) (as added: see note 3).

5 CPR 61.9(1)(b) (as added: see note 3). As to the form, content, serving and filing of a defence see PARA 189. In such a case, judgment may be against the defendant personally, as well as against the property (the res): see *The Deichland* [1988] 2 Lloyd's Rep 454.

6 le under CPR 61.9(1) (see the text and notes 1-5): see CPR 6.19(3) (as added: see note 3).

7 le as set out in the practice direction (*Practice Direction--Admiralty Claims* PD 61: see note 1): see CPR 61.9(3)(a) (as added: see note 3). Accordingly, an application notice for judgment in default must be in Form ADM13 (Application for judgment in default): see CPR 6.19(3) (as so added); *Practice Direction--Admiralty Claims* PD 61 para 8.1. As to the filing of documents in the Admiralty and Commercial Court Registry see PARA 142.

8 CPR 61.9(3) (as added: see note 3).

9 CPR 61.9(4) (as added: see note 3). As to the meaning of 'Register' for these purposes see PARA 161 note 7. As to the entry of a caution against arrest see PARA 166.

10 CPR 61.9(5) (as added: see note 3). As to the proper test under CPR 61.9(5) for the setting aside of a judgment in default entered under CPR Pt 61 see *Humber Boat Works Ltd v Owners of MV 'Selby Paradigm'* [2004] EWHC 1804 (Admlty) at [29], [2004] 2 Lloyd's Rep 714 at [29], [2004] All ER (D) 71 (Aug) at [29]. See also *The Gulf Venture* [1986] 1 Lloyd's Rep 130n, where judgment was set aside on application by a party with a direct financial interest in the outcome of the litigation. It is not necessary for the defendant to have acknowledged service of the claim form when applying to set aside a judgment given in default: *The Ruben Martinez Villena* [1987] 2 Lloyd's Rep 621.

11 As to the Admiralty Registrar see PARA 140.

12 As to appraisalment and sale see PARA 178.

13 Judgment in this case is against the property only, which will normally be under arrest. For a discussion of whether, in a case where the defendant has not acknowledged service in a claim in rem, the claimant is limited to the value of the property (the res), and has no further rights to issue the ordinary forms of execution see *The Conoco Britannia* [1972] 2 QB 543 at 554-555, [1972] 2 All ER 238 at 245, [1972] 1 Lloyd's Rep 342 at 347 per Brandon J.

14 *The Africano*[1894] P 141 at 150. See also PARA 207.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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191. Judgment against party in claim in rem where notice of arrest has been entered.

The claimant in an Admiralty claim in rem¹ may apply to the court for judgment against a party at whose instance a notice against arrest was entered², where:

- 325 (1) the claim form has been served on that party³;
- 326 (2) the sum claimed in the claim form does not exceed the amount specified in the undertaking⁴ given by that party⁵; and
- 327 (3) that party has not fulfilled that undertaking within 14 days after service on him of the claim form⁶.

If the court is satisfied that the claim is well founded, it may give judgment for the amount which appears to it to be due, and enforce payment by committal of the party on whose behalf the caution has been entered, and by arrest of the property (if it is at the time, or subsequently comes, within the jurisdiction of the court)⁷.

1 As to the origin of claims in rem see PARA 83; as to the jurisdiction of the Admiralty Court in relation to claims in rem see PARA 92 et seq; and as to commencing such a claim see PARA 158 et seq.

As to the procedure that governs Admiralty claims generally, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies generally to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 CPR 61.9(6) (CPR Pt 61 added by SI 2001/4015). As to entering a caution against arrest see PARAS 166-167.

3 CPR 61.9(6)(a) (as added: see note 2).

4 Ie the undertaking made in accordance with CPR 61.7(2)(a) (see PARA 166): see CPR 61.9(6)(b) (as added: see note 2).

5 CPR 61.9(6)(b) (as added: see note 2).

6 CPR 61.9(6)(c) (as added: see note 2).

7 It is submitted that the practice described in the text, which was formerly governed by RSC Ord 75 r 21, seems to be observed still, although the rule has been revoked and there is no direct replacement provision in the Civil Procedure Rules.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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192. Judgment in default of filing a collision statement of case.

In the case of a collision claim¹, a party who has filed a collision statement of case² within the time specified³ may obtain judgment in default of a collision statement of case⁴, but only if the party against whom judgment is sought has not filed a collision statement of case⁵ and the time for doing so⁶ has expired⁷.

An application for judgment in default⁸ in a collision claim in rem must be made by filing an application notice⁹, a certificate proving service of the claim form, and evidence proving the claim to the satisfaction of the court¹⁰. Any other claim¹¹ must be made in accordance with the general provisions relating to judgments in default¹² with any necessary modifications¹³. An application notice seeking judgment in default and, unless the court orders otherwise, all evidence in support, must be served on all persons who have entered cautions against release on the Register¹⁴.

The Admiralty Court may set aside or vary any judgment entered in pursuance of these provisions¹⁵.

1 As to the meaning of 'collision claim' for these purposes see PARA 91 note 12. As to judgment in default in claims in rem generally see PARA 190.

As to the procedure that governs Admiralty claims generally, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies generally to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 As to collision statements of case see PARA 182 et seq. As to the filing of documents in the Admiralty and Commercial Court Registry see PARA 142.

3 Ie the time specified by CPR 61.4(5) (see PARA 182): see CPR 61.9(2) (CPR Pt 61 added by SI 2001/4015).

4 CPR 61.9(2) (as added: see note 3).

5 CPR 61.9(2)(a) (as added: see note 3).

6 Ie as set out in CPR 61.4(5) (see PARA 182): see CPR 61.9(2)(b) (as added: see note 3).

7 CPR 61.9(2)(b) (as added: see note 3).

8 Ie under CPR 61.9(2) (see the text and notes 1-7): see CPR 61.9(3) (as added: see note 3).

9 Ie as set out in the practice direction (*Practice Direction--Admiralty Claims* PD 61: see note 1): see CPR 61.9(3)(a) (as added: see note 3). Accordingly, an application notice for judgment in default must be in Form ADM13 (Application for judgment in default): see CPR 61.9(3) (as so added); *Practice Direction--Admiralty Claims* PD 61 para 8.1.

10 CPR 61.9(3) (as added: see note 3).

11 *Practice Direction--Admiralty Claims* PD 61 para 12 ('other claims') applies to Admiralty claims which, before the coming into force of CPR Pt 61 (ie before 25 March 2002: see the Civil Procedure (Amendment No 5) Rules 2001, SI 2001/4015, r 1), would have been called claims in personam: see *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186 et seq. As to the conditions to be met by collision claims before they may be made in personam see PARAS 180-181.

12 As to judgments in default generally see CPR Pt 12 (cited in **CIVIL PROCEDURE** vol 11 (2009) PARA 506 et seq) and CPR 10.2 (cited in **CIVIL PROCEDURE** vol 11 (2009) PARA 186).

13 CPR 61.9(3)(b) (as added: see note 3).

14 CPR 61.9(4) (as added: see note 3). As to the meaning of 'Register' for these purposes see PARA 161 note 7. As to the entry of a caution against arrest see PARA 166. See also the cases cited in PARA 190.

15 CPR 61.9(5) (as added: see note 3). See also the cases cited in PARA 190.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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193. Judgment in default where the claim is made in personam.

All Admiralty claims in personam¹ proceed in accordance with the practice and procedure of the Commercial Court², except for certain requirements that are imposed in relation to the claim form³ and the filing of a defence⁴, and subject to the provisions relating to limitation claims⁵ and to collision claims⁶. Accordingly, the procedure for obtaining judgment in default in such cases is dealt with elsewhere⁷.

1 As to the origin of claims in personam see PARA 84; and as to claims in personam generally see PARA 92 et seq. *Practice Direction--Admiralty Claims* PD 61 para 12 ('other claims') applies to Admiralty claims which, before the coming into force of CPR Pt 61 (ie before 25 March 2002: see the Civil Procedure (Amendment No 5) Rules 2001, SI 2001/4015, r 1), would have been called claims in personam: see *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186. As to CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61 see note 2.

2 See *Practice Direction--Admiralty Claims* PD 61 para 12.2; and PARA 186. Accordingly, an Admiralty claim in personam will proceed in accordance with CPR Pt 58 (as to which see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq): see *Practice Direction--Admiralty Claims* PD 61 para 12.2. See also the Admiralty and Commercial Courts Guide paras B1-B12, N3.1. As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1.

As to the procedure that governs Admiralty claims generally, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. CPR Pt 58 (Commercial Court) applies generally to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

3 As to which see PARAS 187-188.

4 As to which see PARA 189.

5 Ie subject to the provisions of CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61 relating to limitation claims (as to which see PARA 194 et seq): see *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186.

6 See *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186. The text refers to the provisions relating to collision claims which are contained in CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61 (as to which see PARA 180 et seq): see *Practice Direction--Admiralty Claims* PD 61 para 12.1; and PARA 186.

7 Default judgment is governed by CPR Pt 12 and *Practice Direction--Default Judgment* PD 12 (cited in **CIVIL PROCEDURE** vol 11 (2009) PARA 506 et seq): see the Admiralty and Commercial Courts Guide para B10. See also CPR 10.2; and **CIVIL PROCEDURE** vol 11 (2009) PARA 186. As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

193 Judgment in default where the claim is made in personam

NOTE 2--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para B1-B13, N3.1.

NOTE 7--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para B11.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(iv) Limitation Claims/A. RIGHT TO LIMIT LIABILITY/194. Jurisdiction of the court in relation to limitation claims.

(iv) Limitation Claims

A. RIGHT TO LIMIT LIABILITY

194. Jurisdiction of the court in relation to limitation claims.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction in relation to any action by shipowners or other persons under the Merchant Shipping Act 1995 for the limitation of the amount of their liability in connection with a ship² or other property³. Every claim in the exercise of that right, known as a limitation claim⁴, must be started in the Admiralty Court⁵.

Special provisions apply to such claims⁶, relating for example to parties, procedure, and payment into court⁷. The court must distribute among the claimants⁸ the amounts of their established claims, whether or not a limitation fund⁹ has been constituted¹⁰. The court has power, and in some circumstances an obligation, to release a ship or property arrested or attached, where a limitation fund has been constituted¹¹.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 As to the meaning of 'ship' for these purposes see PARA 85 note 7.

3 Supreme Court Act 1981 s 20(1)(b), (3)(c). The right of limitation under the Merchant Shipping Act 1995 referred to in the text derives from s 185(1), Sch 7, which implements the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; Misc 31 (1978); Cmnd 7035) (as to which see PARA 8); see PARAS 195, 1042 et seq.

4 As to the meaning of 'limitation claim' for these purposes see PARA 91 note 13.

5 See CPR 61.2(1)(c); and PARA 91. As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

6 The procedure governing the early stages of a limitation claim differs significantly from the analogous stages of other claims: see the Admiralty and Commercial Courts Guide paras N3.1, N6.1; and PARA 196. The procedure is contained in CPR 61.11 and *Practice Direction--Admiralty Claims* PD 61 para 10 (as to which see PARA 196 et seq); see the Admiralty and Commercial Courts Guide para N6.1. As to the procedure in other Admiralty claims see PARA 157 et seq. As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1.

7 See CPR 61.11; *Practice Direction--Admiralty Claims* PD 61 para 10; and PARA 196 et seq.

8 The claimants may include the Crown: see *The Zoe* (1886) 11 PD 72.

9 As to the limitation fund see the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I art 11; CPR 61.11(18), (19); *Practice Direction--Admiralty Claims* PD 61 para 10.9-10.14; and PARA 195 et seq.

10 See the Merchant Shipping Act 1995 Sch 7 Pt I arts 10-12; and PARAS 1052-1054.

11 As to the release of a ship from arrest where security is previously given under the Convention on Limitation of Liability for Maritime Claims 1976 see PARA 176.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

194 Jurisdiction of the court in relation to limitation claims

NOTE 6--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) paras N3.1, N6.1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(iv) Limitation Claims/A. RIGHT TO LIMIT LIABILITY/195. Limitation of liability under the Merchant Shipping Act 1995.

195. Limitation of liability under the Merchant Shipping Act 1995.

Shipowners and certain other persons have a statutory right to limit their liability¹. In exercise of this right, the claimant, normally the owner² of a ship³, seeks a decree by which his liability in respect of claims arising out of an occurrence is limited to an amount⁴ based upon the tonnage of the ship⁵. A decree of limitation will be denied if it is proved that the loss resulted from the claimant's personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result⁶.

Liability may be limited in respect of claims, whatever the basis of liability may be, for:

- 328 (1) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting from this⁷;
- 329 (2) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage⁸;
- 330 (3) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations⁹;
- 331 (4) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship¹⁰;
- 332 (5) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship¹¹; and
- 333 (6) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability, and further loss caused by such measures¹².

These claims are subject to limitation of liability even if brought by way of recourse or for indemnity under a contract. However, claims of the types in heads (4), (5) and (6) above are subject to limitation of liability to the extent that they relate to a contract of remuneration under a contract with the person liable¹³.

The right to limit liability extends also to salvors¹⁴ and to insurers of liability for claims subject to the general limits of liability¹⁵. The liability of a shipowner includes liability in a claim brought against the vessel itself¹⁶.

1 See the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I art 1; and PARA 1043. As to the persons on whom the right mentioned in the text is conferred see also the text and notes 14-16. In relation to oil pollution, the owner of a ship is permitted to limit liability incurred under s 153: see s 157(1); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 447.

For a discussion of the substantive law in relation to limitation of liability of shipowners and others see PARA 1042 et seq; and as to the special provisions concerning procedure in proceedings to limit liability see PARA 194 et seq. These provisions do not apply to aircraft.

As to the exclusion of claims in respect of occurrences involving nuclear matter see the Nuclear Installations Act 1965 s 14; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1504.

- 2 As to the meaning of 'shipowner' for these purposes see PARA 1043 note 2.
- 3 As to the meaning of 'ship' for these purposes see PARA 1042 note 5.
- 4 As to the calculation of the limit of liability see PARA 1048 et seq.
- 5 As to the procedure for obtaining a decree see PARA 198 et seq. The tonnage is ascertained as directed by statute: see PARA 1048 note 14.
- 6 See the Merchant Shipping Act 1995 Sch 7 Pt I art 4; and PARA 1046. Once the shipowner has proven that the claims in respect of which limitation is sought fell within Sch 7 Pt I art 2(1) (see the text and notes 7-12), the burden of proving that the shipowner is not entitled, pursuant to art 4, to limit his liability, falls on those opposing the shipowner's right to limit. This burden of proof will ordinarily lead to a costs order against those who unsuccessfully oppose a shipowner's right to limit: see *The Capitan San Luis* [1994] QB 465, [1994] 1 All ER 1016.
- 7 See the Merchant Shipping Act 1995 Sch 7 Pt I art 2(1)(a); and PARA 1044.
- 8 See the Merchant Shipping Act 1995 Sch 7 Pt I art 2(1)(b); and PARA 1044.
- 9 See the Merchant Shipping Act 1995 Sch 7 Pt I art 2(1)(c); and PARA 1044.
- 10 See the Merchant Shipping Act 1995 Sch 7 Pt I art 2(1)(d); and PARA 1044. The United Kingdom has made a reservation in respect of the Convention on Limitation of Liability for Maritime Claims (London, 1-19 November 1976; TS 13 Cm 955) art 2(1)(d) (ie the Merchant Shipping Act 1995 Sch 7 Pt I art 2(1)(d)); consequently, liability for the cost of wreck removal remains unlimited in so far as the operation is performed pursuant to statutory powers: see Sch 7 Pt II para 3; and PARA 921.
- 11 See the Merchant Shipping Act 1995 Sch 7 Pt I art 2(1)(e); and PARA 1044.
- 12 See the Merchant Shipping Act 1995 Sch 7 Pt I art 2(1)(f); and PARA 1044.
- 13 See the Merchant Shipping Act 1995 Sch 7 Pt I art 2(2); and PARA 1044.
- 14 Ie as defined in the Merchant Shipping Act 1995 Sch 7 Pt I: see Sch 7 Pt I art 1 para 1; and PARA 1043 note 3.
- 15 See the Merchant Shipping Act 1995 Sch 7 Pt I art 1(6); and PARA 1043. As to a similar provision in the context of pollution claims see s 165(3); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 455.
- 16 See the Merchant Shipping Act 1995 Sch 7 Pt I art 1(5); and PARA 1043. Thus a shipowner who would be liable in a claim in personam may still enjoy the benefit of limitation of liability even if the claim is brought against the ship in rem. The position would appear to be the same even if the shipowner is not liable in personam, but a claim is brought against his ship in rem. As to Admiralty claims in rem see PARA 158 et seq; and as to Admiralty claims made in personam see PARA 186 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(iv) Limitation Claims/B. LIMITATION PROCEEDINGS/196. Commencement of limitation proceedings.

B. LIMITATION PROCEEDINGS

196. Commencement of limitation proceedings.

Limitation of liability may always be raised by way of defence in an Admiralty claim already commenced¹. A limitation claim for a restricted decree may be brought by counterclaim², but a limitation claim for a general decree may only be brought by counterclaim with the permission of the Admiralty Court³. Normally, however, a limitation claim is one in which a person faced by two or more actual or potential claims arising out of an occurrence, takes the initiative and invokes the court's special statutory powers⁴. A claim is started by the issue of a limitation claim form⁵. The claimant and at least one defendant must be named in the claim form, but all other defendants may be merely described⁶.

The claimant may constitute a limitation fund⁷ by making a payment into court⁸, which, to be established, must be the sterling equivalent of the number of special drawing rights to which he claims to be entitled to limit his liability under the Merchant Shipping Act 1995 together with interest on that sum from the date of the occurrence giving rise to his liability to the date of payment into court⁹. On making any such payment into court, the claimant must give notice of it in writing to every named defendant, specifying the date of the payment in, the amount paid in, the amount of interest included, the rate of such interest, and the period to which it relates¹⁰. Money paid into court in this way¹¹ must not be paid out except under an order of the court¹².

1 This is the effect of *Practice Direction--Admiralty Claims* PD 61 para 10.18, which provides that nothing in CPR 61.11 prevents limitation being relied on by way of defence. Any decision in favour of the defendant in such a case is binding only upon the claimant. Cf the procedure for making a limitation decree binding upon the whole world: see PARA 199. CPR 61.11 applies to limitation claims: CPR 61.11(1) (CPR Pt 61 added by SI 2001/4015). As to the meaning of 'limitation claim' for these purposes see PARA 91 note 13. The procedure governing the early stages of a limitation claim, contained in CPR 61.11 and *Practice Direction--Admiralty Claims* PD 61 para 10.1, differs significantly from the procedure relating to other claims: see the Admiralty and Commercial Courts Guide para N6.1. As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1. As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91. As to the jurisdiction of the court in relation to limitation claims see PARAS 194-195. As to the right to obtain release of an arrested ship in certain cases where limitation applies and security has been given see PARA 176.

2 CPR 61.11(22)(a) (as added: see note 1). As to restricted limitation decrees see CPR 61.11(10); and PARA 198. See also *Yuille v B & B Fisheries Ltd, The Radiant* [1958] 2 Lloyd's Rep 596 (counterclaim for limitation).

3 CPR 61.11(22)(b) (as added: see note 1). As to general limitation decrees see CPR 61.11(11); and PARA 198.

4 Ie under the Merchant Shipping Act 1995 s 185, Sch 7 (prospectively amended): see PARA 195. A limitation claim can be commenced without liability first being admitted or established: see *Bouygues Offshore SA v Caspian Shipping Co (No 1, 3, 4 and 5)* [1998] 2 Lloyd's Rep 461, CA. As to the possibility of commencing a limitation claim after an award of damages has been made see *The Penelope II* [1979] 2 Lloyd's Rep 42 (on

appeal [1980] 2 Lloyd's Rep 17, CA); *The Mekhanik Evgrafov and Ivan Derbenev (No 2)* [1988] 1 Lloyd's Rep 330; although quere whether this option would still be available under the Merchant Shipping Act 1995: see *The Mekhanik Evgrafov and Ivan Derbenev* at 335 per Sheen J.

5 CPR 61.11(2) (as added: see note 1). The limitation claim form must be as set out in the practice direction (ie *Practice Direction--Admiralty Claims* PD 61: see note 1): see CPR 61.11(2) (as so added). Accordingly, the claim form in a limitation claim must be in Form ADM15 (Claim Form (Admiralty limitation claim)): *Practice Direction--Admiralty Claims* PD 61 para 10.1(1). The limitation claim form must be accompanied by a declaration setting out the facts upon which the claimant relies and stating the names and addresses (if known) of all persons who, to the knowledge of the claimant, have claims against him in respect of the occurrence to which the claim relates (other than named defendants), and the declaration must be verified by a statement of truth: *Practice Direction--Admiralty Claims* PD 61 para 10.1(2).

6 CPR 61.11(3) (as added: see note 1).

7 A limitation fund may be established before or after a limitation claim has been started: CPR 61.11(19) (as added: see note 1). However, if a limitation claim is not commenced within 75 days after the date the fund was established, the fund will lapse and all money in court (including any interest accrued) will be repaid to the person who made the payment into court: CPR 61.11(20) (as so added). The fact that a limitation fund has lapsed in this way under CPR 61.11(20) does not prevent the establishment of a new fund: *Practice Direction--Admiralty Claims* PD 61 para 10.9. Neither the constitution of a limitation fund nor the ability to constitute a fund is a pre-condition to a court having jurisdiction: see *Seismic Shipping Inc v Total E & P UK plc, The Western Regent* [2005] EWCA Civ 985 at [20]-[23], [2005] 2 All ER (Comm) 515 at [20]-[23], [2005] 2 Lloyd's Rep 359 at [20]-[23] per Clarke LJ.

8 CPR 61.11(18) (as added: see note 1). As to the amount to which the claimant is allowed to limit his liability see the Merchant Shipping Act 1995 Sch 7 Pt I arts 6-8; and PARA 1048 et seq.

9 *Practice Direction--Admiralty Claims* PD 61 para 10.10. Where the claimant does not know the sterling equivalent of the number of special drawing rights referred to in the text on the date of payment into court, he may calculate the figure on the basis of the latest available published sterling equivalent of a special drawing right as fixed by the International Monetary Fund: *Practice Direction--Admiralty Claims* PD 61 para 10.11(1). In the event of the sterling equivalent of a special drawing right on the date of payment into court being different from that used for calculating the amount of that payment into court, the claimant may make up any deficiency by making a further payment into court which, if made within 14 days after the payment into court, will be treated, except for the purpose of the rules relating to the accrual of interest on money paid into court, as if made on the date of that payment into court (*Practice Direction--Admiralty Claims* PD 61 para 10.11(2)(a)); or he may apply to the court for payment out of any excess amount (together with any interest accrued) paid into court (*Practice Direction--Admiralty Claims* PD 61 para 10.11(2)(b)). Such an application under para 10.11(2)(b) may be made without notice to any party; and must be supported by evidence proving, to the satisfaction of the court, the sterling equivalent of the appropriate number of special drawing rights on the date of payment into court: *Practice Direction--Admiralty Claims* PD 61 para 10.12.

10 *Practice Direction--Admiralty Claims* PD 61 para 10.13(1). The claimant must also give notice in writing to every named defendant of any excess amount (and interest) paid out to him under para 10.11(2)(b) (see note 9): *Practice Direction--Admiralty Claims* PD 61 para 10.13(2).

11 Ie under CPR 61.11(18) (see the text and notes 7-10): see CPR 61.11(21) (as added: see note 1).

12 CPR 61.11(21) (as added: see note 1).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

196 Commencement of limitation proceedings

NOTE 1--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para N6.1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/(iv) Limitation Claims/B. LIMITATION PROCEEDINGS/197. Service of the limitation claim form and acknowledgment.

197. Service of the limitation claim form and acknowledgment.

A limitation claim form¹ must be served on all named defendants, and any other defendant who requests service upon him, and it may be served on any other defendant². Every defendant upon whom a limitation claim form is served must either:

- 334 (1) within 28 days of service, file a defence to the limitation claim³, or file a notice that he admits the claimant's right to limit liability⁴; or
- 335 (2) if he wishes to dispute the court's jurisdiction, or wishes to argue that the court should not exercise its jurisdiction, file within 14 days of service or (if the limitation claim form is served out of the jurisdiction) within the time specified⁵ file an acknowledgment of service⁶.

However, generally, an acknowledgment of service is not required⁷.

1 A limitation claim is started by the issue of a limitation claim form: see PARA 196. CPR 61.11 applies to limitation claims: CPR 61.11(1) (CPR Pt 61 added by SI 2001/4015). As to the meaning of 'limitation claim' for these purposes see PARA 91 note 13. The procedure governing the early stages of a limitation claim, contained in CPR 61.11 and *Practice Direction--Admiralty Claims* PD 61 para 10.1, differs significantly from the procedure relating to other claims: see the Admiralty and Commercial Courts Guide para N6.1. As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1. As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91. As to the jurisdiction of the court in relation to limitation claims see PARAS 194-195. As to the right to obtain release of an arrested ship in certain cases where limitation applies and security has been given see PARA 176.

2 CPR 61.11(4) (as added: see note 1). See also Form ADM15B (Notes for defendant (Admiralty limitation claim)).

The claim form may not be served out of the jurisdiction unless the case falls within the Supreme Court Act 1981 s 22(2)(a)-(c) (claims in personam) (see PARA 94), or unless the defendant has submitted or agreed to submit to the jurisdiction of the court, or unless the Admiralty Court has jurisdiction over the claim under any applicable Convention: CPR 61.11(5) (as so added). As to 'any applicable Convention' that may affect jurisdiction see the Civil Jurisdiction and Judgments Act 1982; and PARA 95 et seq. The court must give permission for service out of the jurisdiction in accordance with CPR Pt 6 Section III (CPR 6.17-6.31) (as to which see **CIVIL PROCEDURE** vol 11 (2009) PARAS 156, 168 et seq); see CPR 61.11(5) (as so added). Service of a limitation claim form out of the jurisdiction is permitted in the circumstances identified in CPR 61.11(5) only and the procedure set out in the Admiralty and Commercial Courts Guide App 15 (Service out of the jurisdiction: related practice) should be adapted accordingly: Admiralty and Commercial Courts Guide para N6.2. As to the possible scope of CPR 61.11(5) see *ICL Shipping Ltd v Chin Tai Steel Enterprise Co Ltd, The ICL Vikraman* [2003] EWHC 2320 (Comm) at [58]-[65], [2004] 1 All ER (Comm) 246 at [58]-[65], [2004] 1 Lloyd's Rep 21 at [58]-[65].

3 A defence to a limitation claim must be in Form ADM16A (Defence to Admiralty limitation claim): *Practice Direction--Admiralty Claims* PD 61 para 10.2. As to the filing of documents with the Admiralty and Commercial Court Registry see PARA 142.

4 CPR 61.11(7)(a) (as added: see note 1). A notice admitting the claimant's right to limit liability in a limitation claim must be in Form ADM16 (Notice of admission of right of claimant to limit liability): *Practice Direction--Admiralty Claims* PD 61 para 10.3.

5 le the time specified in CPR 6.22 (as to which see **CIVIL PROCEDURE** vol 11 (2009) PARA 185): see CPR 61.11(7)(b) (as added: see note 1).

6 CPR 61.11(7)(b) (as added: see note 1). The acknowledgment of service must be as set out in the practice direction (ie *Practice Direction--Admiralty Claims* PD 61: see note 1): see CPR 61.11(7)(b) (as so added). Accordingly, the acknowledgment of service in a limitation claim must be in Form ADM16B (Acknowledgment of Service (Admiralty limitation claim)): *Practice Direction--Admiralty Claims* PD 61 para 10.4. If a defendant files an acknowledgment of service under CPR 61.11(7)(b), he is treated as having accepted that the court has jurisdiction to hear the claim unless he applies under CPR Pt 11 (procedure for disputing the court's jurisdiction) (see **CIVIL PROCEDURE** vol 11 (2009) PARA 206) within 14 days after filing the acknowledgment of service: CPR 61.11(8) (as so added).

7 CPR 61.11(6) (as added: see note 1).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

197 Service of the limitation claim form and acknowledgment

NOTES 1, 2--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para N6.1-N6.2.

NOTES 2, 4-6--CPR 61.11(5), (7), (a), (b) amended: SI 2008/2178.

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198. Obtaining a restricted or general limitation decree.

Where, in a limitation claim¹, one or more named defendants admits the right to limit², the claimant may apply for a restricted limitation decree³. The court will then issue a restricted limitation decree⁴ limiting liability only against such named defendants who have admitted the claimant's right to limit liability⁵. A restricted limitation decree may be obtained against any named defendant who fails to file a defence within the time specified for doing so and need not be advertised, although a copy must be served on the defendants to whom it applies⁶.

Where all the defendants upon whom the claim form has been served admit the claimant's right to limit liability, the claimant may apply to the Admiralty Registrar for a general limitation decree⁷ and the court will issue a limitation decree⁸.

In circumstances where one or more of the defendants upon whom the claim form has been served do not admit the claimant's right to limit, the claimant also may apply for a general limitation decree⁹. Where, in this way, the right to limit is not admitted and the claimant seeks a general limitation decree¹⁰, the claimant must, within seven days of the date of the filing of the defence of the named defendant last served or the expiry of the time for doing so, apply for an appointment before the Admiralty Registrar for a case management conference¹¹.

1 As to the meaning of 'limitation claim' for these purposes see PARA 91 note 13. CPR 61.11 applies to limitation claims: CPR 61.11(1) (CPR Pt 61 added by SI 2001/4015). As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91. As to the jurisdiction of the court in relation to limitation claims see PARAS 194-195. As to the right to obtain release of an arrested ship in certain cases where limitation applies and security has been given see PARA 176.

2 This is one of the permitted responses to service of a limitation claim form: see PARA 197.

3 CPR 61.11(9)(a) (as added: see note 1). The application for a restricted limitation decree must be in the form set out in the practice direction (ie *Practice Direction--Admiralty Claims* PD 61: see note 1): see CPR 61.11(9)(a) (as so added). Accordingly, an application for a restricted limitation decree must be in Form ADM17 (Application for restricted limitation decree): *Practice Direction--Admiralty Claims* PD 61 para 10.5.

4 It is in the form set out in the practice direction (ie *Practice Direction--Admiralty Claims* PD 61: see note 1): see CPR 61.11(9)(b) (as added: see note 1). Accordingly, the decree issued by the court on an application for a restricted limitation decree must be in Form ADM18 (Restricted limitation decree): *Practice Direction--Admiralty Claims* PD 61 para 10.5.

5 CPR 61.11(9)(b) (as added: see note 1).

6 CPR 61.11(10) (as added: see note 1).

7 It is in the form set out in the practice direction (ie *Practice Direction--Admiralty Claims* PD 61: see note 1): see CPR 61.11(11) (as added: see note 1). Accordingly, an application for a general limitation decree must be in Form ADM17A (Application for general limitation decree): *Practice Direction--Admiralty Claims* PD 61 para 10.6.

8 CPR 61.11(11) (as added: see note 1). As to the form of a general limitation decree see Form ADM19 (General limitation decree).

9 CPR 61.11(12) (as added: see note 1). The application mentioned in the text must be in the form set out in the practice direction (ie *Practice Direction--Admiralty Claims* PD 61: see note 1): see CPR 61.11(12) (as so added). Accordingly, an application for a general limitation decree must be in Form ADM17A (Application for general limitation decree): *Practice Direction--Admiralty Claims* PD 61 para 10.6. On an application under CPR 61.11(12), the Admiralty Registrar may either grant a general limitation decree, or (if he does not grant a decree) order service of a defence, order disclosure by the claimant, or make such other case management directions as may be appropriate: *Practice Direction--Admiralty Claims* PD 61 para 10.8. As to the Admiralty Registrar see PARA 140.

10 Ie in Form ADM17A (Application for general limitation decree): see *Practice Direction--Admiralty Claims* PD 61 para 10.7.

11 *Practice Direction--Admiralty Claims* PD 61 para 10.7.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

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199. Effect of granting limitation decree.

When a limitation decree is granted¹, the Admiralty Court²:

- 336 (1) may order that any proceedings relating to any claim arising out of the occurrence be stayed³;
- 337 (2) may order the claimant to establish a limitation fund⁴, if one has not been established, or make such other arrangements for payment of claims against which liability is limited⁵;
- 338 (3) may, if the decree is a restricted limitation decree, distribute the limitation fund⁶; and
- 339 (4) must, if the decree is a general limitation decree, give directions as to the advertisement of the decree and set a time within which notice of claims against the fund must be filed or an application made to set aside the decree⁷.

When the court grants a general limitation decree, the claimant must advertise it in such manner and within such time as the court directs, and file both a declaration that the decree has been advertised as so directed, and copies of the advertisements⁸.

If no decree limiting liability is made by the Admiralty Registrar, statements of case are delivered in limitation claims as in other Admiralty claims in personam⁹.

1 As to obtaining a restricted or general limitation decree see PARA 198.

2 As to the meaning of 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91. As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meaning of 'Admiralty claim' for these purposes see PARA 91 note 3. As to the jurisdiction of the court in relation to limitation claims see PARAS 194-195. As to the right to obtain release of an arrested ship in certain cases where limitation applies and security has been given see PARA 176.

3 CPR 61.11(13)(a)(i) (CPR Pt 61 added by SI 2001/4015).

4 As to the establishment and constitution of a limitation fund see PARA 196.

5 CPR 61.11(13)(a)(ii) (as added: see note 3). Neither the constitution of a limitation fund nor the ability to constitute a fund is a pre-condition to either a court having jurisdiction or the grant of a limitation decree: see *Seismic Shipping Inc v Total E&P UK plc, The Western Regent* [2005] EWCA Civ 985 at [20]-[23], [2005] 2 All ER (Comm) 515 at [20]-[23], [2005] 2 Lloyd's Rep 359 at [20]-[23] per Clarke LJ.

6 CPR 61.11(13)(a)(iii) (as added: see note 3). As to the distribution of the limitation fund see PARA 201.

7 CPR 61.11(13)(b) (as added: see note 3). A claim against the fund must be in Form ADM20 (Defendant's claim in a limitation action): *Practice Direction--Admiralty Claims* PD 61 para 10.14. As to proceedings to set aside general limitation decree see PARA 200.

The court always has a discretion to extend the time fixed by the limitation decree: *The Kronprinz Olav* [1921] P 52, CA. Usually, the fact that limitation proceedings are pending is a good ground for the exercise of the court's discretion to extend the time: see *The Disperser* [1920] P 228.

8 CPR 61.11(14) (as added: see note 3).

9 As to Admiralty claims in personam see PARA 186 et seq. As to the delivery of statements of case generally see CPR Pt 6; and **CIVIL PROCEDURE** vol 11 (2009) PARA 138 et seq.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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199 Effect of granting limitation decree

NOTE 9--CPR Pt 6 substituted by SI 2008/2178.

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200. Proceedings to set aside general limitation decree.

Any person other than a defendant on whom a limitation claim form has been served¹ may apply to the Admiralty Court within the time fixed in the decree to have a general limitation decree set aside². Any such application must be supported by a declaration stating that the applicant has a claim against the claimant arising out of the occurrence, and setting out grounds for contending that the claimant is not entitled to the decree obtained, either in the amount of limitation or at all³. No later than seven days after the time for filing claims or declarations, the Admiralty Registrar⁴ will fix a date for a case management conference at which directions will be given for the further conduct of the proceedings⁵.

1 As to service of a limitation claim form see PARA 197. As to the meaning of 'limitation claim' for these purposes see PARA 91 note 13. CPR 61.11 applies to limitation claims: CPR 61.11(1) (CPR Pt 61 added by SI 2001/4015). As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91. As to the jurisdiction of the court in relation to limitation claims see PARAS 194-195. As to the right to obtain release of an arrested ship in certain cases where limitation applies and security has been given see PARA 176.

2 CPR 61.11(16) (as added: see note 1). As to the time fixed in the decree see PARA 199.

3 CPR 61.11(17) (as added: see note 1).

4 As to the Admiralty Registrar see PARA 140.

5 *Practice Direction--Admiralty Claims* PD 61 para 10.17.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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201. Distribution of limitation fund.

No later than the time set in the limitation decree for filing claims¹, each of the defendants who wishes to assert a claim must file and serve his statement of case on both the limiting party and all other defendants (except where the court orders otherwise)². No later than seven days after the time for filing claims or declarations, the Admiralty Registrar³ will fix a date for a case management conference at which directions will be given for the further conduct of the proceedings⁴.

Unless any proceedings are commenced in due time to set aside the decree⁵, the limitation fund⁶ will be distributed among the parties who have filed valid claims in proportion to their established claims against the fund⁷ at a reference, usually directed by the decree, to the Admiralty Registrar⁸.

1 As to obtaining a restricted or general limitation decree see PARA 198; and as to the time fixed in the decree see PARA 199. As to the jurisdiction of the court in relation to limitation claims see PARAS 194-195.

2 CPR 61.11(15) (CPR Pt 61 added by SI 2001/4015). A claim against the fund must be in Form ADM20 (Defendant's claim in a limitation action): *Practice Direction--Admiralty Claims* PD 61 para 10.14. A defendant's statement of case filed and served in accordance with CPR 61.11(15) must contain particulars of the defendant's claim: *Practice Direction--Admiralty Claims* PD 61 para 10.15. Any defendant who is unable to file and serve a statement of case in accordance with CPR 61.11(15) and *Practice Direction--Admiralty Claims* PD 61 para 10.15 must file a declaration, verified by a statement of truth, in Form ADM21 (Declaration as to inability of a defendant to file and serve statement of case under a decree of limitation) stating the reason for his inability: *Practice Direction--Admiralty Claims* PD 61 para 10.16. As to the filing of documents with the Admiralty and Commercial Court Registry see PARA 142.

3 As to the Admiralty Registrar see PARA 140.

4 *Practice Direction--Admiralty Claims* PD 61 para 10.17. These directions may be given in respect of each individual claim and as between defendants eg if any defendant disputes the merits or amount of another defendant's claim. Rival defendants are opposite parties in the litigation, and as such may administer requests for further information and obtain disclosure from each other: *The Nedenes* (1924) 41 TLR 243.

5 As to proceedings to set aside a general limitation decree see PARA 200.

6 As to the establishment and constitution of a limitation fund see PARA 196.

7 No lien or other right in respect of any ship or property affects the proportions in which the fund is divided: see the Merchant Shipping Act 1995 s 185, Sch 7 Pt II para 9; and PARA 1054. This is intended to override the decision in *The Countess* [1923] AC 345, HL, in which the House of Lords held that if one claimant had a possessory lien over the ship, effect had to be given to the superior right even if the effect was to deprive other claimants of their right of recovery against the limitation fund. Interest on sums due is included in the damages for the purposes of limitation: see *The Joannis Vatis (No 2)* [1922] P 213.

8 See PARAS 143, 199. The reference is obligatory except in cases where there is only one claimant against the fund or all claimants are represented by the same solicitor. In these cases, an application notice for payment out is sufficient: see PARA 203. As to references to the Registrar see PARA 143.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

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202. Repayment to claimant.

Where there are loss of life claims, and the statutory amount¹ has all been paid into court, but some of the loss of life claimants fail to come in and enter their claims until after the time appointed for claims to be filed, even though the period of two years has not elapsed within which, under the Merchant Shipping Act 1995², proceedings in respect of such a claim could be commenced, the court may order that the balance of the limitation fund³ which remains in court after all the loss of life claimants who have entered claims in due time have been paid, is to be paid back to the claimants. The claimants who have not entered their claims in time being thus excluded from any share in the limited amount⁴.

1 As to the calculation of the limit of liability see PARAS 195, 1048 et seq.

2 Ie under the Merchant Shipping Act 1995 s 185, Sch 7: see PARA 196.

3 As to the establishment and constitution of a limitation fund see PARA 196.

4 See *The Alma* [1903] P 55. At the time of that decision, the Maritime Conventions Act 1911 (the forerunner to the Merchant Shipping Act 1995 Sch 7) had not been passed, but the court made an order for payment of the balance of the limitation fund to the claimants, although the period of one year prescribed by the Fatal Accidents Act 1846 (now repealed) had not elapsed. It is presumed that the same principles would apply now that the period has been extended by the Merchant Shipping Act 1995. The same principles apparently apply in respect of claims for damage to property, if the general fund exceeds the total of such claims made in time: see *The Alma* at 60 per Jeune P.

UPDATE

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(v) Trial of Admiralty Claims and Post-trial Proceedings

A. OFFERS TO SETTLE

203. Offers to settle and their effect.

The practice as to making an offer to settle proceedings, and a corresponding payment into court (where required) in an Admiralty claim is, in general, similar to the practice applying to proceedings for debt or damages in other claims¹.

However, where a party to a claim to establish liability for a collision claim² (other than a claim for loss of life or personal injury)³:

- 340 (1) makes an offer to settle⁴ not less than 21 days before the start of the trial⁵;
- 341 (2) that offer is not accepted⁶; and
- 342 (3) the maker of the offer obtains at trial an apportionment equal to or more favourable than his offer⁷,

the parties will, unless the court considers it unjust, be entitled to the following costs⁸:

- 343 (a) the maker of the offer will be entitled to all his costs from 21 days after the offer was made⁹, and his costs before then in the percentage to which he would have been entitled had the offer been accepted¹⁰; and
- 344 (b) all other parties to whom the offer was made will be entitled to their costs up to 21 days after the offer was made in the percentage to which they would have been entitled had the offer been accepted¹¹; but will not be entitled to their costs thereafter¹².

1 As to offers to settle and payments into court generally see CPR Pt 36; and **CIVIL PROCEDURE** vol 11 (2009) PARA 729 et seq. See also *The Hudson Bay* [1957] 2 Lloyd's Rep 506 (open offer to refer only to the proportionate liability which the offeror was prepared to bear by way of settlement).

2 As to the meaning of 'collision claim' for these purposes see PARA 91 note 12. As to the procedure that governs Admiralty claims generally, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies generally to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

3 CPR 61.4(10) (CPR Pt 61 added by SI 2001/4015).

4 In the form set out in CPR 61.4(12): see CPR 61.4(10)(a) (as added: see note 3). Accordingly, an offer under CPR 61.4(10) must be in writing and must contain:

56 (1) an offer to settle liability at stated percentages (CPR 61.4(12)(a) (as so added));

- 57 (2) an offer to pay costs in accordance with the same percentages (CPR 61.4(12)(b) (as so added));
 - 58 (3) a term that the offer remain open for 21 days after the date it is made (CPR 61.4(12)(c) (as so added)); and
 - 59 (4) a term that, unless the court orders otherwise, on expiry of that period the offer remains open on the same terms except that the offeree should pay all the costs from that date until acceptance (CPR 61.4(12)(d) (as so added)).
- 5 CPR 61.4(10)(a) (as added: see note 3).
 - 6 CPR 61.4(10)(b) (as added: see note 3).
 - 7 CPR 61.4(10)(c) (as added: see note 3).
 - 8 CPR 61.4(11) (as added: see note 3).
 - 9 CPR 61.4(11)(a)(i) (as added: see note 3).
 - 10 CPR 61.4(10)(a)(ii) (as added: see note 3).
 - 11 CPR 61.4(11)(b)(i) (as added: see note 3).
 - 12 CPR 61.4(10)(b)(ii) (as added: see note 3).

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79-228 Admiralty Jurisdiction of the High Court

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B. GENERAL PROCEDURE RELATING TO TRIAL

204. General procedure in the Admiralty Court relating to trial.

For the purposes of an Admiralty claim in rem¹, a collision claim², an Admiralty claim in personam³ and a limitation claim⁴, the general practice and procedure of the Commercial Court⁵ governs:

- 345 (1) case management (with certain modifications made in relation to each type of claim)⁶;
- 346 (2) disclosure⁷;
- 347 (3) applications⁸;
- 348 (4) the use of alternative dispute resolution ('ADR')⁹;
- 349 (5) evidence for trial¹⁰;
- 350 (6) conduct of the trial itself¹¹;
- 351 (7) after trial proceedings¹²;
- 352 (8) multi-party disputes¹³;
- 353 (9) litigants in person¹⁴;
- 354 (10) arbitration¹⁵.

The awarding of costs in Admiralty proceedings is in the unfettered discretion of the Admiralty Court or the Admiralty Registrar, as the case may be¹⁶.

1 As to the origin of claims in rem see PARA 83; as to the jurisdiction of the Admiralty Court in relation to claims in rem see PARA 92 et seq; and as to commencing such a claim see PARA 158 et seq.

2 As to the meaning of 'collision claim' for these purposes see PARA 91 note 12. As to the jurisdiction of the Admiralty Court in relation to collision claims see PARA 180; and as to commencing such a claim see PARA 181 et seq.

3 As to the origin of claims in personam see PARA 84; as to claims in personam generally see PARA 92 et seq; and as to commencing such a claim see PARA 186 et seq.

4 As to limitation claims see PARA 194 et seq.

5 As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. CPR Pt 58 (Commercial Court) applies generally to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the procedure that governs Admiralty claims generally, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

Pre-trial matters in the Admiralty and Commercial Courts are usually dealt with by the judges of those courts: see *Practice Direction--Commercial Court* PD 58 para 1.2; and the Admiralty and Commercial Courts Guide para A1.5. However, one significant area of difference between practice in the Commercial Court and practice in the Admiralty Court is that many interlocutory applications are heard by the Admiralty Registrar who has all the

powers of the Admiralty judge save as provided otherwise: see CPR 61.1(4); the Admiralty and Commercial Courts Guide para N1.3; and PARA 140. As to the Admiralty and Commercial Courts Guide see PARAS 91 note 3, 157 note 1. As to the Admiralty Registrar see PARA 140.

6 As to the general practice and procedure of the Commercial Court in this regard see the Admiralty and Commercial Courts Guide paras D1-D19, App 6; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1539. However, the two judge team system referred to in the Admiralty and Commercial Courts Guide para D.4 does not apply to Admiralty claims: see para N8.2. All other case management provisions of the Admiralty and Commercial Courts Guide apply to Admiralty claims save that:

- 60 (1) in Admiralty claims, the case management provisions are supplemented by the provisions of *Practice Direction--Admiralty Claims* PD 61 para 2 (as to which see PARA 158) which make provision for the early classification and streaming of cases (see the Admiralty and Commercial Courts Guide para N8.1(i));
- 61 (2) in a collision case, the claimant should apply for a case management conference within seven days after the last collision statement of case is filed (see the Admiralty and Commercial Courts Guide para N8.1(ii));
- 62 (3) in a limitation claim, *Practice Direction--Admiralty Claims* PD 61 para 10.7 applies (as to which see PARA 198) so that where the right to limit is not admitted and the claimant seeks a general limitation decree, the claimant must, within seven days after the date of the filing of the defence of the defendant last served or the expiry of the time for doing so, apply to the Admiralty Registrar for a case management conference (see the Admiralty and Commercial Courts Guide para N8.1(iii));
- 63 (4) in a collision claim or a limitation claim, a mandatory case management conference will normally take place on the first available date five weeks after the date when the claimant is required to take steps to fix a date for the case management conference (see the Admiralty and Commercial Courts Guide para N8.1(iv));
- 64 (5) in a limitation claim, case management directions are initially given by the Registrar (see *Practice Direction--Admiralty Claims* PD 61 para 10.8 (cited in PARA 198); and the Admiralty and Commercial Courts Guide para N8.1(v));
- 65 (6) in the Admiralty Court, the Case Management Information Sheet should be used in the form given in the Admiralty and Commercial Courts Guide App 6 but with the inclusion of additional questions that are cited in para N8.1(vi) (see para N8.1(vi)).

As to the filing of documents with the Admiralty and Commercial Court Registry see PARA 142.

It is usual to consolidate pending claims of salvage against the same property (see *The Strathgarry* [1895] P 264); and the conduct of consolidated salvage claims is usually given to the principal salvor. See also the observations of Hill J in *The Creteforest* [1920] P 111 at 116-117; and the decision as to costs in *The Macgregor Laird* [1953] 2 Lloyd's Rep 259 at 268 per Willmer J. Permission for separate representation may be given, but it does not necessarily follow that the costs of separate representation will be allowed: *The Longford* (1881) 6 PD 60 at 67. Co-claimants in salvage cases are frequently allowed separate representation and separate costs: see eg *The Bosworth (No 2)* [1960] 1 All ER 729, [1961] 1 WLR 319, [1960] 1 Lloyd's Rep 173, CA. Consolidation may be ordered by the court in its discretion without the consent and notwithstanding the objection of the parties (see *The Strathgarry*), and if it becomes expedient after judgment has been delivered the court will make an order that the claims should proceed separately thereafter as originally instituted (see *The Helen R Cooper* (1871) LR 3 A & E 339).

As to the appropriate approach in the Commercial Court and the Admiralty Court to the jurisdiction to strike out, either under CPR 3.4(2) (as to which see **CIVIL PROCEDURE** vol 11 (2009) PARA 520) or under the inherent jurisdiction of the court, a damage to cargo and short delivery claim which has proceeded to trial and is therefore likely to be uneconomic see *Amgulf Polymers & Chemicals Ltd v The Owners and/or Demise Charterers of MV Athinoula* [2001] 2 All ER (Comm) 821.

7 As to the general practice and procedure of the Commercial Court in this regard see the Admiralty and Commercial Courts Guide paras E1-E5, Apps 8-10; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1540. In Admiralty cases, the court may decline to order further information if it will affect the conduct of the proceedings. For instance, in claims of damage, the collision statements of case (as to which see PARA 182 et seq) afford the information which would otherwise be furnished by further information: see *The Biola* (1876) 34 LT 185; *The Isle of Cyprus* (1890) 15 PD 134; *The Bernard* [1905] WN 73. Where, however, one ship is lost with all, or most of, her crew, or one or other of the parties is for any reason unable to offer satisfactory evidence, further information may be allowed: see *The Radnorshire* (1880) 5 PD 172.

Where the authenticity of any document disclosed to a party is not admitted, that party must serve notice that the document must be proved at trial in accordance with CPR 32.19 (see **CIVIL PROCEDURE** vol 11 (2009) PARA

778), which provides that such notice must be served by the latest date for serving witness statements or within seven days of disclosure of the document (whichever is later): see the Admiralty and Commercial Courts Guide para N9.2(a). Where, apart from the authenticity of the document itself, the date upon which a document or an entry in it is stated to have been made or the person by whom the document states that it or any entry in it was made or any other feature of the document is to be challenged at the trial on grounds which may require a witness to be called at the trial to support the contents of the document, such challenge must be raised in good time in advance of the trial to enable such witness or witnesses to be called, and the grounds of challenge must be explicitly identified in the skeleton argument or outline submissions in advance of the trial: see the Admiralty and Commercial Courts Guide para N9.2(b). Where, due to the late disclosure of a document it or its contents or character cannot practicably be challenged within the time limits prescribed in the Admiralty and Commercial Courts Guide para N9.2(a) or N9.2(b), the challenge may only be raised with the permission of the court and having regard to the Overriding Objective (ie CPR 1.1, as to which see **CIVIL PROCEDURE** vol 11 (2009) PARA 33): see the Admiralty and Commercial Courts Guide para N9.2(c). As to summonses used merely to obtain documents and prove their authenticity see *Khanna v Lovell White Durrant*[1994] 4 All ER 267, [1995] 1 WLR 121.

8 As to the general practice and procedure of the Commercial Court in this regard see the Admiralty and Commercial Courts Guide paras F1-F16, App 5; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1541.

9 As to the general practice and procedure of the Commercial Court in this regard see the Admiralty and Commercial Courts Guide paras G1-G2, App 7; and **CIVIL PROCEDURE** vol 12 (2009) PARAS 1536, 1541.

10 As to the general practice and procedure of the Commercial Court in this regard see the Admiralty and Commercial Courts Guide paras H1-H4, App 11; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1542.

In collision claims, the Admiralty and Commercial Courts Guide para H1.5 and App 8 (Standard pre-trial Timetable) (see note 7) are subject to the proviso that experience has shown that it is usually desirable for the main elements of a witness's evidence in chief to be adduced orally: see para N9.1. As to evidence in cases where a collision statement of case must be filed (as to which see PARA 182 et seq) see further *Fisher v CHT Ltd* [1965] 2 All ER 601, [1965] 1 WLR 1093 (on appeal on another point [1966] 2 QB 475, [1966] 1 All ER 88, CA). As to the weight to be attached generally to evidence in statements where the facts are contested and there is also oral evidence see *The Scarcity, The Daniel M* [1967] 2 Lloyd's Rep 498 at 508 per Brandon J. As to the role of assessors in collision claims and other cases involving issues of navigation and seamanship see PARA 205.

Whether it is more reasonable to examine a witness beforehand or to detain him ashore pending the trial depends on the circumstances of each case, but the costs judge has a discretion to disallow the cost of detaining a witness ashore, if he might conveniently have been examined beforehand: see *The Ibis VI* [1921] P 255, CA. The question whether evidence should be permitted to be taken abroad is to be decided by the court in its discretion; for the principles which are applied see *Berdan v Greenwood* (1880) 20 ChD 764n, CA. The court is apt to look most favourably on the application of a defendant resident abroad, who has not chosen an English forum (see *Ross v Woodford*[1894] 1 Ch 38; *New v Burns* (1894) 64 LQB 104, CA) and least favourably upon the application of a claimant for evidence to be taken abroad (*Ross v Woodford*; *Coch v Allcock*(1888) 21 QBD 178, CA; *Emanuel v Soltykoff* (1892) 8 TLR 331, CA).

The court has a wide discretion to admit statements notwithstanding failure to comply with the rules: see *The Ferdinand Retzlaff*[1972] 2 Lloyd's Rep 120 at 126.

11 As to the general practice and procedure of the Commercial Court in this regard see the Admiralty and Commercial Courts Guide paras J1-J13, Apps 12-14; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1542. See also the Admiralty and Commercial Courts Guide paras N10.1, N10.2; and PARA 143.

In collision claims, the skeleton argument of each party must be accompanied by a plot or plots of that party's case or alternative cases as to the navigation of vessels during and leading to the collision; and all plots must contain a sufficient indication of the assumptions used in the preparation of the plot: see the Admiralty and Commercial Courts Guide para N9.3.

12 As to the general practice and procedure of the Commercial Court in this regard see the Admiralty and Commercial Courts Guide paras K1-K4. As to offers to settle and their effect on costs see PARA 203. As to appraisal and sale of a ship by the court (either before or after judgment) see PARA 178. As to the scope for a rehearing see PARA 206.

13 As to the general practice and procedure of the Commercial Court in this regard see the Admiralty and Commercial Courts Guide paras L1-L2; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1542.

14 As to the general practice and procedure of the Commercial Court in this regard see the Admiralty and Commercial Courts Guide paras M1-M3; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1542.

15 As to the general practice and procedure of the Commercial Court in this regard see the Admiralty and Commercial Courts Guide paras O1-O20; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1544.

16 See the Supreme Court Act 1981 s 51; CPR Pt 44; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1732 et seq. See also the Admiralty and Commercial Courts Guide App 16 (Security for Costs). As to the extent of the discretion regarding the awarding of costs see *Aiden Shipping Co Ltd v Interbulk Ltd* [1986] AC 965, [1986] 2 All ER 409, HL. When exercising its discretion in favour of the party incurring the costs, the court must be satisfied that the costs have been incurred for the preservation or enhancement of the fund as a whole rather than solely for one party's benefit: *Festive Holidays Ltd v The Demise Charterers of the ship 'Ocean Glory 1'* [2002] 1 Lloyd's Rep 679, [2001] All ER (D) 344 (Nov). See also *The Young Sid* [1929] P 190, CA (costs of partially successful appeal); *The Capitan San Luis* [1994] QB 465, [1994] 1 All ER 1016 (limitation of liability proceedings).

Where the defendant's vessel was pronounced alone to blame in an action of damage, the defendant was usually ordered to pay all the costs of the proceedings. Similarly, where there was a counterclaim in an action of damage and the vessel was found to be alone to blame, the claimant generally bore the whole costs. In actions where neither party admitted negligence and both the vessels were found to blame in equal degrees, the court usually made no order as to costs, leaving each party to bear his own. See, however, *The Lucile Bloomfield* [1966] 3 All ER 294n, [1966] 1 WLR 1525 (costs not further considered on appeal [1967] 2 All ER 633n, [1967] 1 WLR 697n, CA), where on a finding of equal blame the defendants were ordered to pay half the claimant's costs because no counterclaim had been pursued by the defendants in the jurisdiction. Cf *The Ek* [1966] 1 Lloyd's Rep 440.

When, under the Maritime Conventions Act 1911 (repealed) (see now the Merchant Shipping Act 1995 s 185, Sch 7; and PARA 195 et seq), blame was apportioned in unequal degrees, the court took into account the circumstances of each particular case in exercising its discretion as to costs and had regard to the fact that one party had succeeded more than the other on the question of liability: see *The Modica* [1926] P 72 at 79-80 per Hill J; *The Osprey* [1967] 1 Lloyd's Rep 76 at 94 per Brandon J; followed in *The Bonifaz* [1967] 1 Lloyd's Rep 321. There is no rule that where the blame is unequally divided the costs must be divided in the same proportion: *The Modica*; *The Salabangka* [1943] P 13. If a special order as to costs is made, it has generally taken the form of ordering one party to pay a certain proportion of the other party's costs: *The Robert Koeppen* [1926] P 81n (claimants 25% to blame, defendants 75%; defendants ordered to pay 50% of claimants' costs); *The Osprey* (claimants to blame for 60%, defendants 40%; claimants ordered to pay 20% of defendants' costs). In making its award as to costs, the court may also take into account factors such as alterations of log-books, failure properly to complete the collision statement of case, or untruthfulness of witnesses: *The Lord Northcliffe* (1926) 24 Ll L Rep 187; *The Levante* (1927) 28 Ll L Rep 42; *The El Uruguayo* (1928) 30 Ll L Rep 118; *The Samurai* (1945) 78 Ll L Rep 546; *The Pulkovo and The Oden* [1989] 1 Lloyd's Rep 280. As to the effect of an offer by letter before trial to settle on a percentage of blame basis see *The Hudson Bay* [1957] 2 Lloyd's Rep 506; *The British Patrol* [1968] 1 Lloyd's Rep 117, CA. See also *The Toni* [1974] 1 Lloyd's Rep 489, CA; *The Pulkovo and the Oden*.

Where there had been no negligence on the part of either party and both the claim and counterclaim have been dismissed, it being a mere accident that one party was claimant and the other defendant, usually no order was made as to costs: see *The Dolabella* (1944) 77 Ll L Rep 292; *The Hoyanger* (1946) 79 Ll L Rep 284. If, however, there would have been no litigation had the claimants not issued proceedings, judgment was given for the defendants on the claim with costs, and for the claimants on the counterclaim with costs: *The Cardiff Hall* [1918] P 56. Where no counterclaim was made the action was usually dismissed with costs: *The Llanover* (1944) 77 Ll L Rep 198; *The Lufesand* [1955] 2 Lloyd's Rep 203.

In cases of damage following compulsory pilotage, if the defendants raise a defence both on the merits and on the ground of compulsory pilotage without setting up a counterclaim, and the suit was dismissed by reason of the defence of compulsory pilotage having succeeded, usually no costs were given on either side: see *The Daioz* (1877) 3 Asp MLC 477, CA; *The Winestead* [1895] P 170 at 175 per Bruce J; *The Mercedes de Larrinaga* [1904] P 215 at 235 per Gorell Barnes J; *The Ophelia* [1914] P 46, CA; and see PARA 222. Where the sole issue to be decided was compulsory pilotage, the party succeeding on that issue was usually held entitled to the costs of the action: see *The Oakfield* (1886) 11 PD 34 at 37; *The Ophelia*. The defence of compulsory pilotage was abolished by the Pilotage Act 1913 s 15 (repealed) (see now the Pilotage Act 1987 s 16; and PARA 579), and cannot now arise except in rare instances. Although it is probable that effect would be given to s 16 in the case of a collision occurring on the high seas, compulsory pilotage is still a good defence in the case of a collision occurring in the territorial waters of a country by whose laws that defence has not been abolished: see *The Arum* [1921] P 12; *The Waziristan* [1953] 2 All ER 1213, [1953] 1 WLR 1446, [1953] 2 Lloyd's Rep 361; and see PARA 570 et seq.

Where a claimant sued two defendants and succeeded against only one, and the defendants each threw the blame on the other the court ordered the unsuccessful defendant to pay the costs incurred by the claimant and by the successful defendant to each of them direct: see *The Esrom and The Hopper Wills No 66* [1914] WN 81. See also *The River Lagan* (1888) 57 LJP 28; *The Mystery* [1902] P 115, DC; *The Eland and The Monte Urquiola* [1969] 2 Lloyd's Rep 328. For an example of an order of costs in an action where blame was apportioned among three vessels see *The Miraflores and The Abadesa* [1965] 2 Lloyd's Rep 254 (revsd on the question of liability, [1966] P 18, [1966] 1 All ER 553, [1966] 1 Lloyd's Rep 97, CA; affd [1967] 1 AC 826, [1967] 1 All ER 672, [1967] 1 Lloyd's Rep 191, HL). See also *The Quickstep* (1890) 15 PD 196, DC, where the claimants and one of the defendants were held to blame and the successful defendant obtained an order for costs against the claimants. Where the respective defendants did not mutually blame each other, but the claimant, being in reasonable

doubt as to which to sue, sued both and succeeded against only one, the court ordered the claimant to pay the costs of the successful defendant, at the same time giving him permission to add such costs to his costs against the unsuccessful defendant: see *The Svein Jarl* (1923) 129 LT 255; *The Thames III and The KBS* (1928) 166 LT Jo 52. Alternatively, the court has made a direct order. The order made is a matter of the judge's discretion: see *Hong v A and R Brown Ltd* [1948] 1 KB 515, [1948] 1 All ER 185, CA. As to the position in relation to co-defendants see generally CPR Pt 20; and **CIVIL PROCEDURE** vol 11 (2009) PARA 618 et seq. In such a case the proper course is to join both defendants on one claim form, and the claimant is not allowed the extra costs incurred by bringing separate claims against them: see *The Svein Jarl*. See also *The WH Randall* [1928] P 41, CA. Where, however, the unsuccessful defendant did nothing to induce the claimant to sue the successful defendant, and there was nothing in the circumstances of the case to prompt the claimant to sue the successful defendant, the claimant was ordered to pay the latter's costs without any right to receive them from the unsuccessful defendant: see *The Theodoros*, *The Blidensol* [1923] P 26 at 30 per Hill J. The same considerations applied where counterclaims were brought against more than one party: see *The Svein Jarl*.

Where an award of salvage was made in an action of salvage (see PARA 113 et seq) in which no payment into court had been made, the usual practice where the salvors had not been guilty of any misconduct was for the claimants to have all the costs of the action: see *The Dwina* [1892] P 58 at 64; *The Rialto* [1891] P 175 at 179 per Butt J. See also *Hatton v Akt Durban Hausen* 1919 SC 154, where the costs of arresting the defendants' vessel were allowed, even though the subsequent proceedings were brought in personam. For an example of a case involving co-claimants, some of whom were successful see *The Southwark* [1962] 2 Lloyd's Rep 62. As to the effect of payments into court and of open offers see PARA 203. Even where no salvage was awarded, the practice of the old Court of Admiralty was to award no costs, or only a nominal sum, to the defendants, if it considered that the action was brought in good faith: see *The Henrietta* (1837) 3 Hag Adm 345n; *The Little Joe* (1860) Lush 88. It is suggested that this is one of the old rules as to costs which have been obsolete since the Judicature Acts: see *The Monkseaton* (1889) 14 PD 51, CA. When, however, salvors have been guilty of misconduct and for that reason there has been a forfeiture of salvage, they have been condemned in costs: see *The Capella* [1892] P 70; *The Yan-Yean* (1883) 8 PD 147 at 150 per Sir James Hannan. For an example of special orders as to costs made in a case involving a salvage claim and a counterclaim for negligent damage, both partially successful see *The Tojo Maru* [1970] P 21 at 50, [1969] 2 All ER 155 at 173, [1969] 1 Lloyd's Rep 133 at 149 per Willmer LJ (on appeal [1970] P 21 at 77, [1969] 3 All ER 1179 at 1195-1196, [1969] 2 Lloyd's Rep 193 at 214-215, CA, per Karminski LJ; costs not further considered in the House of Lords [1972] AC 242, [1971] 1 All ER 1110, [1971] 1 Lloyd's Rep 341, HL).

When salvage services have been rendered to ship and cargo and salvage has been awarded against both, the owners of the salvaged ship and of the cargo have usually contributed to the costs in proportion to the values on which the award is made, but this has been said to be without prejudice to the salvor's right to recover the whole from either: see *The Elton* [1891] P 265 at 271 per Jeune J.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

204 General procedure in the Admiralty Court relating to trial

NOTE 5--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) paras A1.5, N1.3.

NOTE 6--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) paras D1-D9, App 6, N8.1(i)-N8.1(vi). Para N8.2 not replicated.

NOTES 7-16--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009).

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205. Assessors.

In collision claims¹ and other cases involving issues of navigation and seamanship, the Admiralty Court usually sits with assessors². Nautical assessors and Elder Brethren of Trinity House only advise the court on matters of nautical skill on which information is desired, and it is the duty of the court, having received that information, to exercise its own judgment, and decide the case before it on its own responsibility³. Before an Admiralty judge decides whether to accept the evidence of a nautical assessor, the evidence should be put to counsel so that appropriate submissions can be made⁴.

The parties are not permitted to call expert evidence on such matters, unless the court orders otherwise⁵, and they are reminded of the practice with regard to the disclosure of any answers to the court's questions and the opportunity for comment on them⁶.

1 As to the meaning of 'collision claim' for these purposes see PARA 91 note 12. As to the procedure that governs Admiralty claims generally, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. CPR Pt 58 (Commercial Court) applies generally to claims in the Admiralty Court where CPR Pt 61 does not provide otherwise (see CPR 61.1(3); and PARA 91 note 3); and the practice direction which supplements CPR Pt 58 (ie *Practice Direction--Commercial Court* PD 58) also applies to Admiralty claims except where it is inconsistent with either CPR Pt 61 or *Practice Direction--Admiralty Claims* PD 61 (see para 1.1; and PARA 91 note 3). As to the practice and procedure that applies in the Commercial Court, including CPR Pt 58 and *Practice Direction--Commercial Court* PD 58, see **CIVIL PROCEDURE** vol 12 (2009) PARA 1536 et seq; and **COURTS** vol 10 (Reissue) PARA 615. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 CPR 61.13 (CPR Pt 61 added by SI 2001/4015); and see the Admiralty and Commercial Courts Guide para N14.1. The assessor will normally be asked to assist the court by preparing a report, and by attending the trial and advising the court, on certain matters in dispute in the proceedings: see CPR 35.15(3); and **CIVIL PROCEDURE** vol 11 (2009) PARA 863. As to assessors in general see also the Supreme Court Act 1981 s 70 (assessors and scientific advisers); CPR 35.15; and **CIVIL PROCEDURE** vol 11 (2009) PARA 863. See also *Ahmed v Governing Body of the University of Oxford* [2002] EWCA Civ 1907 at [20], [2003] 1 All ER 915 at [20], [2003] 1 WLR 995 at [20], obiter, per Waller LJ. For an example of appointment of a Trinity Master in a case in the Commercial Court of the Queen's Bench Division see *Southport Corpn v Esso Petroleum Co Ltd* [1953] 2 All ER 1204, [1953] 3 WLR 773; affd sub nom *Esso Petroleum Co Ltd v Southport Corpn* [1956] AC 218, [1955] 3 All ER 864, HL.

3 *The Magna Charta* (1871) 1 Asp MLC 153, 25 LT 512, PC; *The Beryl* (1884) 9 PD 137 at 141, CA; *The Duke of Buccleuch* (1889) 15 PD 86 at 95, CA (affd [1891] AC 310, HL); *The Gannet* [1900] AC 234 at 235-236, HL, per Earl of Halsbury LC; *The City of Berlin* [1908] P 110 at 118, CA; *Cambo Shipping Co Ltd v Dampskibsselskabet Magnus* 1920 SC 26; *The Australia* [1927] AC 145, HL; *SS Melanie (Owners) v SS San Onofre (Owners)* (1919) [1927] AC 162n, HL; *SS Artemisia (Owners) v SS Douglas (Owners)* (1925) [1927] AC 164n, HL. If the court is unable to decide whether the advice received from the nautical assessors is sound, the point is not proven, and the loss falls on the party bearing the burden of proof: *The Australia* at 153 per Lord Sumner.

4 *Owners of Bow Spring v Owners of Manzanillo II* [2004] EWCA Civ 1007, [2005] 1 All ER (Comm) 53n, [2005] 1 WLR 144, [2005] 1 Lloyd's Rep 1.

The Admiralty Court has set out guidelines concerning the use of nautical assessors in collision actions so as to ensure compliance with the right to a fair and public hearing: see *Global Mariner v Atlantic Crusader* [2005] EWHC 380 (Admty) at [12]-[17], [2005] 2 All ER (Comm) 389 at [12]-[17], [2005] 1 Lloyd's Rep 699 at [12]-[17] per Gross J, applying *Owners of Bow Spring v Owners of Manzanillo II*; and see note 6.

5 CPR 61.13 (as added: see note 2); and see the Admiralty and Commercial Courts Guide para N14.1. As to the court's discretion as regards expert evidence generally see CPR 32.1 (cited in **CIVIL PROCEDURE** vol 11 (2009) PARA 791). See also *The Gazelle* (1842) 1 Wm Rob 471; *The Sir Robert Peel* (1880) 4 Asp MLC 321, CA; *The Kirby Hall* (1883) 8 PD 71 at 75.

6 See the Admiralty and Commercial Courts Guide para N14.2. The text refers to the guidance with regard to the disclosure of answers to the court's questions and the opportunity for comment on them as set out by Gross J in *Global Mariner v Atlantic Crusader* [2005] EWHC 380 (Admlty), [2005] 2 All ER (Comm) 389, [2005] 1 Lloyd's Rep 699 (cited in note 4): see the Admiralty and Commercial Courts Guide para N14.2.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

205 Assessors

NOTES 2, 5, 6--See now *The Admiralty and Commercial Courts Guide* (8th Edn, 2009) para N14.1-N14.2.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/ (v) Trial of Admiralty Claims and Post-trial Proceedings/B. GENERAL PROCEDURE RELATING TO TRIAL/206. Rehearing.

206. Rehearing.

It is well settled that the High Court possesses a power, which will be exercised in a fit case, to rehear Admiralty claims where a mistake is proved to have been made on the first hearing; but this power will only be exercised rarely and with great caution¹.

¹ *The Monarch* (1839) 1 Wm Rob 21; *The James Armstrong* (1875) LR 4 A & E 380; *The Georg* [1894] P 330 at 333.

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Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/ (v) Trial of Admiralty Claims and Post-trial Proceedings/C. PAYMENTS AND ENFORCEMENT/207. Payment of money found due.

C. PAYMENTS AND ENFORCEMENT

207. Payment of money found due.

Where the amount of the liability of the defendants, or of claimants against whom a counterclaim has been substantiated, is ascertained¹ either by the Admiralty Registrar², or by virtue of the amount of the principal sum due being specified in the order of the court, the person entitled to receive the amount may, if the proceeds of a ship or cargo are in court or their value has been paid into court, obtain an order directing the amount found due to him to be paid to him, or on his written authority to his solicitor³. Where there is more than one claimant it is the duty of the court to see that all persons who have a claim on the fund share in its distribution⁴. If the claim is one for damage, and there are claims both for loss of life and for damage to property, the fund will be distributed pro rata among the various claimants unless the defendants take proceedings to limit their liability⁵.

If there have been cross-claims of damage in which both vessels have been held to blame, or proceedings where both claim and counterclaim have succeeded, the amount due will be the amount of the balance, if any, which is found due after the amounts due to the claimants in the cross-claims, or to the claimants and defendants in cases where there are counterclaims, have been set off against each other⁶.

1 Where a wrong in respect of which the claim or counterclaim is made involves an expenditure in a foreign currency, the proper rate of exchange for ascertaining the amount payable in English currency is the rate prevailing at the date of the wrong: *SS Celia v SS Volturno* [1921] 2 AC 544, HL; *The Baarn* [1933] P 251, CA. In appropriate cases judgment may be given in a foreign currency: see *The Despina R* [1979] AC 685, [1979] 1 All ER 421, HL, applied in *The Lash Atlantico* [1987] 2 Lloyd's Rep 114, CA; *The Transoceanica Francesca and Nicos V* [1987] 2 Lloyd's Rep 155. In a salvage case, the relevant date for conversion is the date of the services, even though the parties are all foreigners and sterling has been devalued between that date and the date of judgment: *The Teh Hu* [1970] P 106, [1969] 3 All ER 1200, [1969] 2 Lloyd's Rep 365, CA. As to the extent of Admiralty jurisdiction regarding salvage claims see PARA 113 et seq.

2 As to the Admiralty Registrar see PARA 140; and as to references to the Admiralty Registrar PARA 143.

3 See PARA 203.

4 See *The Joannis Vatis* [1922] P 92, CA, where shipowners, suing for themselves and as bailees of the cargo, recovered judgment for the full amount of damage to their vessel and to the cargo, and the cargo-owners, although they had not assented to the action, were held entitled to share in the fund. As to cautions against payment out see PARA 174.

5 *Canadian Pacific Rly Co v SS Storstad* [1920] AC 397, PC.

6 See *The Khedive* (1882) 7 App Cas 795, HL.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act

1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(3) PRACTICE OF THE HIGH COURT/ (v) Trial of Admiralty Claims and Post-trial Proceedings/C. PAYMENTS AND ENFORCEMENT/208. Execution by fieri facias.

208. Execution by fieri facias.

The ordinary remedies for enforcing a judgment in the High Court are applicable to Admiralty claims¹. Thus writs of fieri facias are issued when necessary to recover the amount, including costs, due under the judgment in a claim in personam². In the case of a claim in rem³, where the defendant has acknowledged service and judgment has been pronounced against him, the claimant is entitled, in the absence of any limitation of liability⁴, to a writ of fieri facias on the ship released on bail, or on any other property belonging to the defendant, in respect of his claim and costs, or the balance if part payment has been made⁵.

1 As to enforcement generally see **CIVIL PROCEDURE** vol 11 (Reissue) PARA 1223 et seq.

2 As to writs of fieri facias generally see **CIVIL PROCEDURE** vol 12 (2009) PARA 1266 et seq.

3 As to the origin of claims in rem see PARA 83; as to the jurisdiction of the Admiralty Court in relation to claims in rem see PARA 92 et seq; and as to commencing such a claim see PARA 158 et seq.

4 As to limitation of liability see PARA 194 et seq.

5 See *The Gemma* [1899] P 285, CA; followed in *The Dupleix* [1912] P 8. As to remedies available in the case of judgment in default see PARA 190. As to arrest after damages have been awarded see *The Alletta* [1974] 1 Lloyd's Rep 40; not followed in *The Daien Maru No 18* [1986] 1 Lloyd's Rep 387, Singapore HC.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(4) OTHER COURTS HAVING ADMIRALTY JURISDICTION/(i) County Courts/209. Former jurisdiction of the county courts.

(4) OTHER COURTS HAVING ADMIRALTY JURISDICTION

(i) County Courts

209. Former jurisdiction of the county courts.

The Admiralty jurisdiction of the county courts¹ was abolished with effect from 26 April 1999² and all Admiralty proceedings commenced thereafter must be commenced in the High Court³.

¹ As to the jurisdiction of the county courts generally see **COURTS** vol 10 (Reissue) PARA 701 et seq.

² See the Civil Courts (Amendment) (No 2) Order 1999, SI 1999/1011 (amending the Civil Courts Order 1983, SI 1983/713). See, however, the County Courts Act 1984 ss 26-31, under which it remains lawful for the Lord Chancellor, if he and the Lord Chief Justice at any time think it expedient for any county court to have Admiralty jurisdiction, by order to appoint that court to have such Admiralty jurisdiction as is provided in that Act.

³ As to the jurisdiction of the High Court generally see **COURTS** vol 10 (Reissue) PARA 606 et seq. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91. As to the procedure that governs Admiralty claims, including CPR Pt 61 and *Practice Direction--Admiralty Claims* PD 61, see PARA 91 et seq. As to the meanings of 'Admiralty claim' and 'Admiralty Court' for these purposes see PARA 91 note 3.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(4) OTHER COURTS HAVING ADMIRALTY JURISDICTION/(ii) Court of Admiralty of the Cinque Ports/210. Jurisdiction of the Court of Admiralty of the Cinque Ports.

(ii) Court of Admiralty of the Cinque Ports

210. Jurisdiction of the Court of Admiralty of the Cinque Ports.

The Confederation of the Cinque Ports originally comprised the five ports of Hastings, Romney, Hythe, Dover and Sandwich, although other ports have been admitted over the years either as corporate members (also known as corporate limbs) or as non-corporate members (also known as non-corporate limbs)¹.

The Court of Admiralty of the Cinque Ports is presided over by the Judge Official and the Commissary of the Court of Admiralty of the Cinque Ports, but its role today is primarily ceremonial, no cases having been heard by it for many years². The court has inherent jurisdiction to hear a number of Admiralty disputes³, and additional statutory jurisdiction to hear salvage disputes on appeal from the Salvage Commissioners of the Cinque Ports⁴. In the absence of the parties' consent, the court sat in St James's Church at Dover, but the court may exercise its jurisdiction within the boundaries of jurisdiction of the Lord Warden of the Cinque Ports⁵.

1 The Confederation emerged because in return for certain Channel Ports providing ship service (the supply and maintenance of ships and crew ready for the Crown in case of need) a Royal Charter of 1155 granted rights which included: freedom from toll, lestage, passage and similar taxes and duties; exemption from the jurisdiction of external courts; and the right to levy local taxes, to hold their own courts and to punish offenders: see the official website of the Confederation of the Cinque Ports which, at the date at which this volume states the law, is to be found at: <http://www.cinqueports.org>.

The continuance of the Confederation of the Cinque Ports is unaffected by the local government areas established by the Local Government Act 1972 Pt I (ss 1-19) (as to which see **LOCAL GOVERNMENT** vol 69 (2009) PARA 5 et seq) (see s 271(3)); and the Secretary of State or any appropriate Minister may at any time by order under s 254(1) make provision for securing the continued discharge of functions in relation to the Confederation of the Cinque Ports and its courts (including so far as is necessary for that purpose, provision for the constitution of a body to replace any existing corporation), for appropriating property or providing funds for the discharge of such functions, and otherwise for securing that anything required or authorised to be done by, to or in relation to the Confederation or any of its courts may continue to be done (s 254(2)(i); and see **LOCAL GOVERNMENT** vol 69 (2009) PARA 6).

2 See 4 Hasted's History of Kent 118.

3 The court has the same inherent jurisdiction as the High Court of Admiralty possessed before the commencement of the Supreme Court of Judicature Act 1873. As to that inherent jurisdiction see PARA 80 et seq. As to the jurisdiction and rights in respect of royal fish as droits of the Lord Warden see *Cinque Ports (Lord Warden) v R* (1831) 2 Hag Adm 438. As to royal fish see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 229. As to droits of Admiralty see PARA 139.

4 See the Cinque Ports Act 1821 s 4 (amended by the Statute Law Revision Act 1888; and the Statute Law (Repeals) Act 1993). As to the duties and jurisdiction of the Cinque Ports Salvage Commissioners see PARA 211. Nothing in the Merchant Shipping Act 1995 Pt IX (ss 224-255) (salvage and wreck) (as to which see PARA 883 et seq) prejudices or affects any jurisdiction or powers of Lord Warden or any officers of the Cinque ports or of any court of those ports or of any court having concurrent jurisdiction within the boundaries of those ports; and disputes as to salvage arising without those boundaries must be determined, subject to the International Convention on Salvage (London, 28 April 1989; Misc 8 (1991); Cm 1526), as set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (see PARA 891 et seq), in the manner in which they have been hitherto determined: s 314, Sch 14 para 11.

5 As to these boundaries see the Cinque Ports Act 1821 s 18 (amended by the Statute Law Revision Act 1888).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(4) OTHER COURTS HAVING ADMIRALTY JURISDICTION/(ii) Court of Admiralty of the Cinque Ports/211. Duties and jurisdiction of the Cinque Ports Salvage Commissioners.

211. Duties and jurisdiction of the Cinque Ports Salvage Commissioners.

The Cinque Ports Salvage Commissioners are appointed by the Lord Warden of the Cinque Ports¹, or by the person who is Deputy Warden of the Cinque Ports and Lieutenant of Dover Castle². The Cinque Ports Act 1821, under which such commissioners are appointed, defines the boundaries of the cinque ports to seawards and on the coast³, and enables the commissioners to determine questions arising as to the salvage of anchors and chain cables found at sea or supplied to ships, and as to salvage services rendered generally to ships within the jurisdiction of the Cinque Ports, and to goods which have been wrecked or stranded within that jurisdiction, provided that the master or owner of the salvaged ship or the owners of the salvaged goods, or his or their agents, are present⁴.

1 See the Cinque Ports Act 1821 s 1 (amended by the Statute Law (Repeals) Act 1993).

2 The person who is Deputy Warden of the Cinque Ports may exercise any power conferred by the Cinque Ports Act 1821 on the Lord Warden: see s 5A (added by the Statute Law (Repeals) Act 1993 s 1(2), Sch 2 Pt II para 10).

3 As to these boundaries see the Cinque Ports Act 1821 s 18 (amended by the Statute Law Revision Act 1888).

4 See the Cinque Ports Act 1821 ss 1, 2 (both amended by the Statute Law (Repeals) Act 1993). Although this power of the Lord Warden is obsolete, it has been saved in the Merchant Shipping Act 1995 s 314, Sch 14 para 11 (as to which see PARA 210 note 4).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(4) OTHER COURTS HAVING ADMIRALTY JURISDICTION/(ii) Court of Admiralty of the Cinque Ports/212. Appeal from an award of the Cinque Ports salvage commissioners.

212. Appeal from an award of the Cinque Ports salvage commissioners.

An appeal from the determination by the Cinque Ports salvage commissioners of any salvage disputes may, within eight days after the award of salvage is made, be brought either to the Court of Admiralty of the Cinque Ports or to the Admiralty Court of the High Court of Justice¹. The proceedings must be commenced within 20 days, and the property in respect of the salving of which the award was made may be released on security being given in double the amount of the award².

1 See the Cinque Ports Act 1821 s 4 (amended by the Statute Law Revision Act 1888; and the Statute Law (Repeals) Act 1993). See also the Supreme Court Act 1981 s 61(1), Sch 1 para 2; and **COURTS** vol 10 (Reissue) PARA 613. As to the jurisdiction of the High Court generally see **COURTS** vol 10 (Reissue) PARA 606 et seq. As to the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 See the Cinque Ports Act 1821 s 4 (amended by the Statute Law Revision Act 1888; and the Statute Law (Repeals) Act 1993). An appeal from the commissioners' award is in the nature of a rehearing rather than an appeal, and it is obligatory on the court to allow a restatement of the case and to admit fresh evidence. The court will, however, in the exercise of its discretion as to costs, discourage the giving of fresh evidence unwarrantably: see *The Caledonia* (1869) LR 4 A & E 11. For further proceedings in appeals from the commissioners see also *The Annette* (1873) LR 4 A & E 9.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(4) OTHER COURTS HAVING ADMIRALTY JURISDICTION/(ii) Court of Admiralty of the Cinque Ports/213. Appeal from the Court of Admiralty of the Cinque Ports.

213. Appeal from the Court of Admiralty of the Cinque Ports.

An appeal lies to the Queen in Council, and any such appeal would be referred to the Judicial Committee of the Privy Council¹.

¹ See the Judicial Committee Act 1833 s 3; and **COURTS** vol 10 (Reissue) PARA 403. See, for an instance of such an appeal, *The Clarisse* (1856) 12 Moo PCC 340.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(4) OTHER COURTS HAVING ADMIRALTY JURISDICTION/(iii) Other Admiralty Courts/214. Former local courts of Admiralty.

(iii) Other Admiralty Courts

214. Former local courts of Admiralty.

Many of the seaport boroughs had in their charters a grant of a court of Admiralty¹, but in 1835 all local courts, except that of the Cinque Ports², were deprived of any Admiralty jurisdiction they might have³. Certain titular and honorific rights, however, still appear to survive. For instance, the mayor of Southampton has a silver oar as *insigne* of a titular admiralty, and is entitled to receive the first visit from foreign men-of-war visiting the port, and the mayors of some other ports have a similar privilege.

1 Some maritime towns had from a very early period courts of the seaport, which administered the law maritime. Disputes as to jurisdiction arose between the Admiral's court and these courts, which led to two statutes (13 Ric 2 stat 1 c 5 (1389-90) (repealed); and the Admiralty Jurisdiction Act 1391 (repealed)) defining and restricting the jurisdiction of the Admiral: see Carter's History of the English Courts (5th Edn) 103.

2 As to which see PARA 210.

3 See the Municipal Corporations Act 1835 s 108 (repealed). By virtue of local legislation, the Liverpool Court of Passage continued to have Admiralty jurisdiction until its abolition by the Courts Act 1971 s 43 (repealed). Pending proceedings were then transferred to the Liverpool county court. The Mayor's and City of London Court was an Admiralty county court until the Admiralty jurisdiction of the county courts was abolished (as to which see PARA 209).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(4) OTHER COURTS HAVING ADMIRALTY JURISDICTION/(iii) Other Admiralty Courts/215. Courts of the Vice-Admirals of the coast.

215. Courts of the Vice-Admirals of the coast.

The sea coast of England and Wales is divided into 19 districts, for each of which a Vice-Admiral of the coast may be appointed¹. Vice-Admirals of the coast represent the Lord High Admiral, or the Lords Commissioners for executing that office, in his capacity so far as it was not concerned with the navy. They are appointed by letters patent under the Great Seal, and the appointment is *durante bene placito*². The jurisdiction extends up to high-water mark and to the first bridges towards the sea on rivers, and is exercisable by a judge³. The patent of the Vice-Admiral empowers him to appoint his own officers, excepting, however, the judge, Registrar and marshal of his Vice-Admiralty Court. These excepted officers are appointed by letters patent, but there are none in existence at the present time, and, consequently, although the jurisdiction of these courts of Vice-Admiralty over causes of action arising in the jurisdiction has never been abolished by statute, there is now no means of executing it. There is no jurisdiction as to wreck.

1 These districts are: (1) Northumberland, Durham, and York; (2) Lincoln; (3) Norfolk; (4) Suffolk; (5) Essex; (6) Kent; (7) Sussex; (8) Hampshire; (9) Dorset; (10) Devon; (11) South Cornwall; (12) North Cornwall; (13) Somerset; (14) Gloucester; (15) South Wales; (16) North Wales; (17) Chester; (18) Lancaster; and (19) Westmorland and Cumberland.

2 The form of patent is printed in *Baker's Vice-Admiral of the Coast* 50 et seq, where the jurisdiction exercised by the court is stated. As to the Great Seal see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 357 et seq.

3 By an order of a committee of the Lords and Commons, 1635, the judge was to be a discreet and learned man in the civil laws dwelling or resorting within the circuit of his office, or for want of a civilian one learned in the common laws of the realm dwelling within the same circuit. In 1663 the Duke of York (afterwards James II), the then Lord High Admiral, issued instructions to the judge of the Court of Admiralty and to the Vice-Admirals, by which the powers and duties of those officers were regulated. Under these the whole of the judicial powers was directed to be exercised by the judge, but the levying and receiving the perquisites of the office or droits of Admiralty remained with the Vice-Admirals. These instructions did not apparently interfere with the jurisdiction of the judges of the Vice-Admiralty Courts, as these judges continued to be appointed. The patents confer no jurisdiction in prize matters (as to which see further **PRIZE**). See further *Baker's Vice-Admiral of the Coast* 69.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(4) OTHER COURTS HAVING ADMIRALTY JURISDICTION/(iii) Other Admiralty Courts/216. Jersey, Guernsey and the Isle of Man.

216. Jersey, Guernsey and the Isle of Man.

The Royal Courts of Jersey and Guernsey and the Admiralty Court of the Isle of Man have an Admiralty jurisdiction¹.

¹ The statutory provisions which confer Admiralty jurisdiction, ie the Supreme Court Act 1981 ss 20-24 (as to which see PARA 85 et seq), may be extended, with such exceptions, adaptations and modifications as may be specified, to any of the Channel Islands or the Isle of Man by Order in Council: see s 150(1).

Accordingly, the Admiralty Jurisdiction (Guernsey) Order 1993, SI 1993/2664, extends the Admiralty jurisdiction of the High Court to the whole of the Bailiwick of Guernsey (Guernsey, Alderney, Herm, Jethou and Sark) and the territorial waters adjacent thereto. However, at the date at which this volume states the law, no order has been made in respect of Jersey. It would appear that the Royal Court of Jersey probably has jurisdiction over all matters arising within the island: see *Re Jersey Jurats* (1866) LR 1 PC 94, although the exact extent of Admiralty jurisdiction is unclear. Similarly, no order has been made in respect of the Isle of Man, but its jurisdiction is almost identical with that of the Admiralty Court of the High Court of Justice: see *Roscoe's Admiralty Practice* (5th Edn) 35, 36.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(4) OTHER COURTS HAVING ADMIRALTY JURISDICTION/(iii) Other Admiralty Courts/217. Colonial Courts of Admiralty.

217. Colonial Courts of Admiralty.

The Colonial Courts of Admiralty have taken the place of the Vice-Admiralty Courts in British possessions¹. The jurisdiction of these courts may be more restrictive than the Admiralty jurisdiction of the High Court². The judgments of a Colonial Court of Admiralty are subject to the same local rights of appeal as they would have been if pronounced by the court in the exercise of its ordinary civil jurisdiction³. There is an ultimate appeal as of right without special permission to Her Majesty in Council⁴ from a judgment of any court in a British possession in the exercise of the jurisdiction conferred by the Colonial Courts of Admiralty Act 1890⁵. Permission of the Privy Council to appeal is necessary if the petition of appeal has not been lodged within the time prescribed by the rules, or, if no time is so prescribed, within six months from the date of the judgment appealed against⁶.

1 As to the origin and jurisdiction of the Colonial Courts see the Colonial Courts of Admiralty Act 1890 s 2; and **COMMONWEALTH** vol 13 (2009) PARA 838.

2 In *The Yuri Maru; The Woron* [1927] AC 906, PC, the Privy Council held that the jurisdiction conferred by the Colonial Courts of Admiralty Act 1890 was that jurisdiction existing at the time the Act came into force. Under the Supreme Court Act 1981, Her Majesty may by order in council direct, either generally or in relation to particular courts or territories, that the Colonial Courts of Admiralty Act 1890 is to have effect in any British possession: see s 150(2). Accordingly, see the Admiralty Jurisdiction (British Indian Ocean Territory) Order 1984, SI 1984/540 (amended by the Admiralty Jurisdiction (British Indian Ocean Territory) (Amendment) (No 2) Order 1992, art 2); and the Admiralty Jurisdiction (Gibraltar) Order 1987, SI 1987/1263. As to orders made under an equivalent provision of the Administration of Justice Act 1956, which by virtue of the Interpretation Act 1978 s 17(2)(b) have effect as if made under the Supreme Court Act 1981 s 150(2), see the Admiralty Jurisdiction (Virgin Islands) Order in Council 1961, SI 1961/2033 (amended by SI 1965/130); the Admiralty Jurisdiction (Cayman Islands) Order 1964, SI 1964/922; the Admiralty Jurisdiction (Turks and Caicos Islands) Order 1965, SI 1965/1529; the Admiralty Jurisdiction (Falkland Islands) Order 1966, SI 1966/686; the Admiralty Jurisdiction (Montserrat) Order 1968, SI 1968/1647; the Admiralty Jurisdiction (St Helena and its Dependencies) Order 1969, SI 1969/858; and the Admiralty Jurisdiction (Bermuda) Order 1974, SI 1974/2148.

3 See the Colonial Courts of Admiralty Act 1890 s 5; and see **COMMONWEALTH** vol 13 (2009) PARA 838.

4 See the Colonial Courts of Admiralty Act 1890 s 6; and see **COMMONWEALTH** vol 13 (2009) PARA 838.

5 See the Colonial Courts of Admiralty Act 1890 s 6(1) (cited in **COMMONWEALTH** vol 13 (2009) PARA 838); *Richelieu and Ontario Navigation Co v SS Cape Breton* [1907] AC 112, PC.

6 See the Colonial Courts of Admiralty Act 1890 s 6(2); and see **COMMONWEALTH** vol 13 (2009) PARA 838.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(5) APPEALS/(i) Appeals from the High Court/A. JURISDICTION AND PRELIMINARY PROCEEDINGS/218. Application of general law to Admiralty appeals.

(5) APPEALS

(i) Appeals from the High Court

A. JURISDICTION AND PRELIMINARY PROCEEDINGS

218. Application of general law to Admiralty appeals.

Admiralty cases are subject to the same provisions as other cases with regard to the making of applications to appeal from the High Court¹ to the Court of Appeal² or to the House of Lords³.

1 As to the jurisdiction of the High Court generally see **COURTS** vol 10 (Reissue) PARA 606 et seq. As to the Admiralty jurisdiction of the High Court and the assignment of business to the Admiralty Court see CPR 61.2(1), (2); and PARA 91.

2 As to the provision made for procedure on appeals to the Court of Appeal see **CIVIL PROCEDURE** vol 12 (2009) PARA 1701 et seq.

3 As to the provision made for procedure on appeals to the House of Lords see **CIVIL PROCEDURE** vol 12 (2009) PARA 1717 et seq. As to stay pending appeal to the House of Lords see *The Ratata* [1897] P 118 at 131.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(5) APPEALS/(i) Appeals from the High Court/A. JURISDICTION AND PRELIMINARY PROCEEDINGS/219. Security for costs in appeal from Admiralty claim in rem.

219. Security for costs in appeal from Admiralty claim in rem.

Where the claim in relation to which an appeal is made is an Admiralty claim in rem¹, it is not the usual practice for an appellant who has furnished security² in the court below, and so obtained there the release of the property proceeded against, to be required to give security for the costs of the appeal³. However, the Court of Appeal has a general power to order security for costs, under special circumstances⁴.

1 As to claims in rem see PARA 158 et seq.

2 As to methods of furnishing security in Admiralty claims see PARA 171 et seq.

3 *The Victoria* (1876) 1 PD 280, CA. It is the practice to take into account the costs of a potential appeal when fixing the original demand for security.

4 See CPR 25.15; and **CIVIL PROCEDURE** vol 11 (2009) PARA 748.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(5) APPEALS/(i) Appeals from the High Court/B. HEARING AND DECISION/220. Principles governing hearing of Admiralty appeal.

B. HEARING AND DECISION

220. Principles governing hearing of Admiralty appeal.

The power of receiving additional evidence in its discretion in Admiralty appeals was transferred to the Court of Appeal together with the rest of the jurisdiction over such appeals formerly possessed by the Judicial Committee of the Privy Council¹.

When the Court of Appeal is assisted by nautical assessors, who may advise the court on issues of navigation and seamanship in collision cases², it will not generally allow additional evidence to be called on matters of nautical knowledge and skill³. As in the case of the court of first instance, it is the duty of the Court of Appeal, having received the advice of the assessors, to exercise its own judgment⁴ and, if the advice of the assessors in the Court of Appeal differs from that of those in the court of first instance, the Court of Appeal must make its own choice as to which advice it will follow⁵. It is desirable that questions submitted by the Court of Appeal to its assessors should be in writing⁶.

Where there has been a conflict of evidence in the court below, the Court of Appeal must decide, as in other cases, whether the conclusion reached by the judge appealed from is the proper one, but will attach great weight to his view of the evidence owing to the fact that the witnesses were examined before him, and he saw their demeanour and manner of giving evidence⁷.

Where in a claim for damage by collision the judge in the court of first instance has found both vessels to blame and, in accordance with the Merchant Shipping Act 1995⁸, has apportioned the blame between them, the Court of Appeal, if it agrees with the judge on the facts, will not lightly interfere with his apportionment of blame. If, however, the Court of Appeal takes a different view of the facts, it is bound to review the apportionment⁹.

1 See *The Scindia* (1866) LR 1 PC 241; the Judicial Committee Act 1833; the Judicial Committee Act 1843; the Supreme Court Act 1981 s 15(2); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1701 et seq. As to the general procedure that applies to the hearing of appeals see CPR 52.11; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1672 et seq.

2 As to the role of assessors generally see PARA 205.

3 *The Assyrian* (1890) 6 Asp MLC 525, CA. See, however, *The Antares II and Victory* [1996] 2 Lloyd's Rep 482 where the Admiralty Court stated that although it had been long established that when the court was assisted by nautical assessors expert evidence on matters of navigation and seamanship might not be adduced, the rule did not appear to be absolute.

4 *The Gannet* [1900] AC 234, HL; *The Australia* [1927] AC 145, HL; *The Tovarisch* [1930] P 1 at 7, CA, per Scrutton LJ; *The Otranto* [1930] P 110 at 133, CA, per Lawrence LJ.

5 *The Fina Canada* [1962] 2 Lloyd's Rep 445, CA; *Saul v Saint Andrew's Steam Fishing Co Ltd, The St Chad* [1965] 2 Lloyd's Rep 1, CA; *The Sobieski* (1949) 82 Ll L Rep 370; *The Miraflores and the Abadesa* [1966] 1 Lloyd's Rep 97 (Willmer LJ dissenting, revsd sub nom *Miraflores (Owners) v George Livanos (Owners)* [1967] 1 AC 826, HL); *Hattersley & Sons Ltd v George Hodgson Ltd* (1905) 21 TLR 178, CA (Court of Appeal may consider the opinion and reasons of the assessor which were given to the trial judge). However, the parties to the appeal are not entitled to copies of the opinion and reasons of the assessors given to the trial judge: *The Banshee* (1887) 56 LT 725, CA.

6 *SS Melanie (Owners) v SS San Onofre (Owners)* [1927] AC 162n at 164, HL, per Lord Birkenhead LC.

7 *SS Hontestroom v SS Sagaporack* [1927] AC 37, HL. See also *The Glannibanta* (1876) 1 PD 283, CA; *The Sisters* (1876) 1 PD 117, CA; *The Singapore and The Hebe* (1866) LR 1 PC 378. A judge must not, however, be taken, in preferring the witnesses on one side to those on the other, to be treating all the evidence on one side as exact and all the evidence on the other as necessarily and deliberately untruthful: *The Eurymedon* (1942) 73 Ll L Rep 217 at 225, HL, per Lord Merriman.

8 le in accordance with the Merchant Shipping Act 1995 ss 187-189 (multiple fault) (see PARAS 1060-1062).

9 There needs to have been some error of law shown, some misapprehension of a vital factor or some other exceptional reason to revise the apportionment: see *The Umtali* (1938) 160 LT 114, HL; *The Macgregor* [1943] AC 197, [1943] 1 All ER 33, HL; *The Karamea* [1921] P 76, CA (affd sub nom *SS Haugland v SS Karamea* [1922] 1 AC 68, HL). See also *The Clara Camus* (1925) 134 LT 50, CA (revsd (1926) 136 LT 291, HL, but the point referred to in the text was not dealt with); *The British Aviator* [1965] 1 Lloyd's Rep 271, CA; *The Miraflores and the Abadesa* [1966] P 18, [1966] 1 All ER 553, CA; revsd [1967] 1 AC 826, [1967] 1 All ER 672, [1967] 1 Lloyd's Rep 191, HL; *The Almizar* [1970] 1 Lloyd's Rep 67, CA (on appeal [1971] 2 Lloyd's Rep 290, HL); *The Anneliese* [1970] 2 All ER 29n, [1970] 1 Lloyd's Rep 355, CA; *The Statue of Liberty* [1970] 2 Lloyd's Rep 151, CA (on appeal [1971] 2 Lloyd's Rep 277, HL). See also the principles laid down in *The Savina* [1976] 2 Lloyd's Rep 123, HL.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(5) APPEALS/(i) Appeals from the High Court/B. HEARING AND DECISION/221. References to the Admiralty Registrar.

221. References to the Admiralty Registrar.

The Court of Appeal has discretionary power to refer any question arising in an appeal to the Admiralty Registrar¹, either alone or assisted by one or more merchants or other assessors². A reference ordered by the Court of Appeal will be dealt with in the same way as a reference ordered by the High Court³. The Registrar's decision on the reference may come before the Court of Appeal by way of an appeal against the High Court's consideration of the Registrar's decision⁴ but, in such a case, the Court of Appeal will not lightly depart from the Registrar's assessment and may restore it if satisfied that the judge has interfered on inadequate grounds⁵.

1 As to the Admiralty Registrar see PARA 140; and as to references to the Admiralty Registrar see PARA 143.

2 See the Judicial Committee Act 1833 s 17 (see **COURTS** vol 10 (Reissue) PARA 460); the Supreme Court Act 1981 s 15(2) (see **CIVIL PROCEDURE** vol 12 (2009) PARA 1702); and *The Flying Fish* (1865) 3 Moo PCCNS 77 at 91 per Lord Chelmsford. It is not the modern practice to appoint merchants or other assessors in the circumstances mentioned in the text; but as to nautical assessors, who may advise the court on issues of navigation and seamanship in collision cases, see PARA 205.

3 As to the raising of a reference by the High Court see *Practice Direction--Admiralty Claims* PD 61 para 13; and PARA 143 et seq.

4 As to appeals against the Admiralty Registrar's decision see PARA 149.

5 *The Amerika* [1914] P 167, CA.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(5) APPEALS/(i) Appeals from the High Court/B. HEARING AND DECISION/222. Costs of Admiralty appeal.

222. Costs of Admiralty appeal.

The costs of an appeal, like the costs of an Admiralty claim, are in the unfettered discretion of the court¹. This discretion must be exercised judicially but, in general, costs follow the event. Thus where the Court of Appeal in a collision claim affirms the apportionment of blame made by the court below the appellant will usually be condemned in the costs of the appeal². Where a party succeeds on the appeal, he will be awarded his costs of the appeal, and this is so even in cases where the success consists only in the fact that degrees of blame found by the court below have been readjusted on appeal³. As regards the costs of the court below, the Court of Appeal will generally order the costs to be apportioned in accordance with the apportionment of blame found by the Court of Appeal⁴. The rule of practice has been followed in the Court of Appeal that, where the appellants succeed on the ground of compulsory pilotage, no costs will be given⁵.

¹ *The Young Sid* [1929] P 190, CA, following the decision of the House of Lords in *Donald Campbell & Co Ltd v Pollak* [1927] AC 732, HL. As to costs in Admiralty proceedings in the High Court proceedings see PARA 204.

² *The Hector* (1883) 8 PD 218, CA, per Bowen LJ; *The City of Manchester* (1880) 5 PD 221, CA; *The Alida Gorthno* [1956] 1 Lloyd's Rep 567, CA; *The Lucile Bloomfield* [1967] 2 All ER 633n, [1967] 1 WLR 697n, [1967] 1 Lloyd's Rep 341, CA. Where an appeal and cross-appeal are dismissed with costs, the principle of no apportionment laid down as to claim and counterclaim cases in *Medway Oil and Storage Co v Continental Contractors Ltd* [1929] AC 88, HL, has been applied: see *The Stentor* [1934] P 133, CA.

³ *The Young Sid* [1929] P 109 (affd at [1929] P 190, CA); *The Fina Canada* [1962] 2 Lloyd's Rep 445, CA; *The British Aviator* [1965] 1 Lloyd's Rep 271, CA; *The British Patrol* [1968] 1 Lloyd's Rep 117, CA; *The Almizar* [1970] 1 Lloyd's Rep 67, CA.

⁴ As to the effect of an open offer on award of costs on appeal see *The British Patrol* [1968] 1 Lloyd's Rep 117, CA; *The Almizar* [1970] 1 Lloyd's Rep 67, CA; and see PARA 203.

⁵ See *The Daioz* (1877) 3 Asp MLC 477, CA. As to compulsory pilotage see PARA 570.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(5) APPEALS/(ii) Appeals from Inferior Courts/223. Appeals to the Divisional Court of the Queen's Bench Division.

(ii) Appeals from Inferior Courts

223. Appeals to the Divisional Court of the Queen's Bench Division.

The Divisional Court of the Queen's Bench Division¹ sits to hear statutory shipping casualty rehearings and appeals under the Merchant Shipping Act 1995².

¹ As to the divisions of the High Court generally see **COURTS** vol 10 (Reissue) PARAS 602-605. As to matters assigned to a Divisional Court of the Queen's Bench Division see **CIVIL PROCEDURE** vol 12 (2009) PARA 1697.

² The divisional court's general jurisdiction to hear appeals is rarely invoked in Admiralty matters. However, the Secretary of State may order a case to be reheard in part or wholly if new and important evidence which could not be produced either at a shipping inquiry or at a formal investigation has been discovered, or if there appear to be other grounds for suspecting that a miscarriage of justice may have occurred: see the Merchant Shipping Act 1995 s 64(1) (see PARA 523), s 269(1) (see PARA 871). See also PARA 224 et seq. Such rehearings were ordered following the discovery and surveying of wrecks in the case of *The MV Derbyshire* (see the Report of the re-opened formal investigation into the loss of the MV Derbyshire, 8 November 2000) and in the case of *The Gaul* (see the Department of the Environment, Transport and the Regions Marine Accident Investigation Branch, Marine Accident Report 4/99, Report on the Underwater Survey of the Stern Trawler GAUL H.243 and the supporting Model Experiments, August 1998-January 1999). See also *Rutberg v Williams*[1962] 1 QB 12, [1961] 2 All ER 649, DC (appeal from magistrates as to fine imposed under the Merchant Shipping (Safety and Load Line Conventions) Act 1932 s 44 (repealed)); and *Babbs v Press*[1971] 3 All ER 654, [1971] 1 WLR 1739, [1971] 2 Lloyd's Rep 383, DC (appeal from magistrates dismissing charge brought against licensed waterman under the Pilotage Act 1913 s 30(3) (repealed)).

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(5) APPEALS/(ii) Appeals from Inferior Courts/224. Appeals to the Divisional Court in relation to statutory marine investigations or inquiries and rehearings.

224. Appeals to the Divisional Court in relation to statutory marine investigations or inquiries and rehearings.

Appeals from a formal investigation into a shipping accident¹, or from an inquiry under the Merchant Shipping Act 1995 into the fitness or conduct of a master, mate or engineer², lie to the Divisional Court of the Queen's Bench Division (if the decision has been given in England³ or by a naval court) in cases where the person holding the inquiry or investigation (as the case may be) has decided to cancel or suspend the certificate of any person or found any person at fault, and if no application has been made for a re-hearing by order of the Secretary of State⁴, or if such an application has been refused⁵.

Under the Merchant Shipping Act 1995, the Secretary of State may order that a rehearing of an inquiry into the fitness or conduct of an officer⁶ or of a seaman other than an officer⁷, or from a formal investigation into a shipping casualty⁸, is to take place either before the persons who held the first hearing, or before a wreck commissioner⁹ or the High Court¹⁰. This provision will only apply where the initial inquiry or investigation was held in England, Wales or Northern Ireland¹¹. A rehearing must be ordered by the Secretary of State under the Merchant Shipping Act 1995 if new and important evidence which could not be produced at the shipping inquiry or investigation has been discovered, or if there appear to the Secretary of State to be other grounds for suspecting that a miscarriage of justice may have occurred¹². In a case where at the inquiry or investigation either a person's certificate has been cancelled or suspended or he has been found at fault, then, if an application has not been made to the Secretary of State to order a rehearing, or if one has been made but has been refused, that person, or any other interested person who appeared at the inquiry or investigation, may appeal to the High Court¹³.

1 As to which see the Merchant Shipping Act 1995 s 268 (formal investigation into marine accidents); and PARA 856.

2 As to which see the Merchant Shipping Act 1995 s 61 (inquiries as to fitness or conduct of an officer); and PARA 511.

3 As to the meaning of 'England' see PARA 17 note 2.

4 As to such applications see the Merchant Shipping Act 1995 s 64 (appeal from inquiry into fitness or conduct of officer) (see PARA 523), s 269 (appeal from formal investigation into marine accidents) (see PARA 871); and see PARA 227. As to the Secretary of State for these purposes see PARA 38.

5 See the Merchant Shipping Act 1995 s 64(4) (appeal from inquiry into fitness or conduct of officer) (cited in PARA 523), s 269(4) (appeal from formal investigation into marine accidents) (cited in PARA 871). For examples of such appeals see *The City of Lincoln* (1947) 80 Ll L Rep 692, DC; *The Corchester* [1957] P 84, [1956] 3 All ER 878, DC; *The Seistan* [1960] 1 All ER 32, [1960] 1 WLR 186, DC.

Where on any investigation or inquiry into a shipping casualty the court finds that the casualty has been caused or contributed to by the wrongful act or default of any person, and an application for a rehearing has not been made or has been made and refused, the owner of the ship, or any other person having an interest in the investigation or inquiry who has appeared at the hearing and is affected by the decision of the court, has the same right of appeal against the decision as a master has against a decision with respect to the cancellation or suspension of his certificate: see the Merchant Shipping Act 1995 ss 64(4), 269(4), concerning appeals by 'interested parties'. A master who has been censured, but whose certificate has not been cancelled or suspended, has a right of appeal as 'a person having an interest' in the inquiry.

6 le an inquiry held under the Merchant Shipping Act 1995 s 61 (as to which see PARA 511): see s 64(1). A rehearing and an application made under s 61 are treated as an appeal for the purposes of *Practice Direction-- Appeals* PD 52 para 22.2 (as to which see PARA 225): see para 22.2(1); and PARA 225.

7 le held under the Merchant Shipping Act 1995 s 63 (as to which see PARA 517): see s 64(1).

8 le where a formal investigation has been held under the Merchant Shipping Act 1995 s 268 (as to which see PARA 856): see s 269(1).

9 As to wreck commissioners see PARA 58.

10 See the Merchant Shipping Act 1995 s 64(1), (2) (cited in PARA 523), s 269(1), (2) (cited in PARA 871). Rules of court made for the purpose of rehearings under s 64 or under s 269 which are held by the High Court, or of appeals to the High Court, may require the court, subject to such exceptions, if any, as the rules allow, to hold such a rehearing or hear such an appeal with the assistance of one or more assessors: see s 65(2) (cited in PARA 509), s 270(2) (cited in PARA 857). As to the conduct of rehearings see PARA 225 et seq. As to nautical assessors, who may advise the court on issues of navigation and seamanship in collision cases, see PARA 205.

11 See the Merchant Shipping Act 1995 s 64(2) (cited in PARA 523), s 269(2) (cited in PARA 871). As to the meaning of 'Wales' see PARA 17 note 2.

12 See the Merchant Shipping Act 1995 s 64(1) (cited in PARA 523), s 269(1) (cited in PARA 871).

13 See the Merchant Shipping Act 1995 s 64(4) (cited in PARA 523), s 269(4) (cited in PARA 871). Rules of court may provide for assessors to assist at the hearing: see note 10.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(5) APPEALS/(ii) Appeals from Inferior Courts/225. Procedure on appeal to the Divisional Court.

225. Procedure on appeal to the Divisional Court.

In relation to appeals made to the Divisional Court under the Merchant Shipping Act 1995¹, the standard practice and procedure applies generally regarding the court's powers² and the conduct of the hearing³. However, aside from an appeal notice⁴, the appellant also must file any report to the Secretary of State⁵ containing the decision from which the appeal is brought⁶; and, where a re-hearing by the Divisional Court is ordered under the Merchant Shipping Act 1995⁷, the Secretary of State must give reasonable notice to parties whom he considers to be affected by the re-hearing⁸.

The Divisional Court may, in special circumstances, order that security must be given for the costs of the appeal⁹.

1 As to appeals from marine investigations or inquiries and rehearings under the Merchant Shipping Act 1995 see PARA 224. As to the divisions of the High Court generally see **COURTS** vol 10 (Reissue) PARAS 602-605. As to matters assigned to a Divisional Court of the Queen's Bench Division see **CIVIL PROCEDURE** vol 12 (2009) PARA 1697.

2 See CPR 52.10; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1671.

3 See CPR 52.11; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1672.

4 As to the appellant's notice and appealing in general see **CIVIL PROCEDURE** vol 12 (2009) PARA 1657 et seq.

5 As to the Secretary of State for these purposes see PARA 38.

6 *Practice Direction--Appeals* PD 52 para 22.2(2). *Practice Direction--Appeals* PD 52 para 22 applies to appeals under the Merchant Shipping Act 1995 and for this purpose a re-hearing and an application under s 61 (as to which see PARA 511) are treated as appeals: *Practice Direction--Appeals* PD 52 para 22.2(1).

7 Ie under the Merchant Shipping Act 1995 s 64 (cited in PARA 523) or s 269 (cited in PARA 871): see *Practice Direction--Appeals* (2001) PD 52 para 22.2(3). See also PARA 224.

8 *Practice Direction--Appeals* (2001) PD 52 para 22.2(3).

9 See CPR 25.15; and **CIVIL PROCEDURE** vol 11 (2009) PARA 748.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(5) APPEALS/(ii) Appeals from Inferior Courts/226. Further appeal from the Divisional Court.

226. Further appeal from the Divisional Court.

Appeal lies to the Court of Appeal from a decision of a Divisional Court, but the permission of the Divisional Court or the Court of Appeal is required in the case of the determination by a Divisional Court of an appeal to the High Court¹.

Subject to specified conditions², an appeal may be brought direct to the House of Lords from a decision of a Divisional Court³.

¹ See CPR Pt 52; *Practice Direction--Appeals* (2001) PD 52 para 4.9; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1682.

² See the Administration of Justice Act 1969 ss 12-15; **CIVIL PROCEDURE** vol 12 (2009) PARA 1718; and **COURTS** vol 10 (Reissue) PARA 361.

³ See the Administration of Justice Act 1969 s 12(2)(c); **CIVIL PROCEDURE** vol 12 (2009) PARA 1718; and **COURTS** vol 10 (Reissue) PARA 361.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(5) APPEALS/(ii) Appeals from Inferior Courts/227. Rehearing at the instance of the Secretary of State.

227. Rehearing at the instance of the Secretary of State.

A rehearing of a shipping inquiry or investigation¹ may be ordered by the Secretary of State² to be heard by the person who held it, by a wreck commissioner³ or by a Divisional Court of the Queen's Bench Division⁴.

¹ As to which see the Merchant Shipping Act 1995 s 61 (inquiries as to fitness or conduct of an officer) (cited in PARA 511), s 268 (formal investigation into marine accidents) (cited in PARA 856). See also PARA 224.

² As to the Secretary of State for these purposes see PARA 38.

³ As to wreck commissioners see PARA 58.

⁴ See the Merchant Shipping Act 1970 s 64(2) (cited in PARA 523), s 269(2) (cited in PARA 871). As to the procedure on a rehearing see s 65 (regarding inquiries) (cited in PARA 509) and s 270 (regarding formal investigations) (cited in PARA 857).

As to the divisions of the High Court generally see **COURTS** vol 10 (Reissue) PARAS 602-605. As to matters assigned to a Divisional Court of the Queen's Bench Division see **CIVIL PROCEDURE** vol 12 (2009) PARA 1697.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/2. ADMIRALTY JURISDICTION OF THE HIGH COURT/(5) APPEALS/(iii) Pilotage Appeals/228. Pilotage appeals.

(iii) Pilotage Appeals

228. Pilotage appeals.

Certain county courts and stipendiary magistrates formerly had power to hear appeals by pilots in certain cases against decisions of pilotage authorities (for example, in connection with pilots' licences) but this jurisdiction no longer exists¹. Under the Pilotage Act 1987, which deregulates the pilot service and puts in its place a system administered by harbour authorities, the licensing of pilots is a matter for the competent harbour authorities².

¹ See the Pilotage Act 1983 s 26 (repealed by the Pilotage Act 1987 s 32(5), Sch 3).

² See the Pilotage Act 1987 s 3; and PARA 567. As to statutory harbour authorities see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 619.

UPDATE

79-228 Admiralty Jurisdiction of the High Court

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/3. MERCHANT SHIPS/(1) BRITISH SHIPS/229. Meaning of 'ship' for the purposes of the Merchant Shipping Act 1995.

3. MERCHANT SHIPS

(1) BRITISH SHIPS

229. Meaning of 'ship' for the purposes of the Merchant Shipping Act 1995.

For the purposes of the Merchant Shipping Act 1995, unless the context otherwise requires, 'ship' includes every description of vessel used in navigation¹. Whether a vessel comes within that meaning of a ship depends on the facts of each case; the statutory definition is intended to enlarge the meaning of 'ship'². To be a 'ship' for the purposes of the merchant shipping legislation³, a vessel must be used in navigable waters, either inland or at sea⁴, and, although she must be constructed for navigation⁵, it is not necessary to the definition that she should be able to navigate under her own power⁶. The presence of a rudder and the manning of the vessel with a crew are important as showing that a vessel is a ship⁷, but the absence of either does not mean that a vessel is not a ship⁸. The purpose for which a vessel has been and is being used is also material when considering whether she is used in navigation⁹.

The Secretary of State¹⁰ may by order: (1) provide for a shipping provision¹¹ to apply (with or without modification) in relation to specified things which are used, navigated or situated wholly or partly in or on water¹²; (2) provide for a shipping provision not to apply in relation to specified things which are used, navigated or situated wholly or partly in or on water¹³; (3) modify a shipping provision in its application in relation to specified things which are used, navigated or situated wholly or partly in or on water¹⁴.

1 Merchant Shipping Act 1995 s 313(1). See *Everard v Kendall* (1870) LR 5 CP 428 (collision between barges propelled by oars); *Ex p Ferguson* (1871) LR 6 QB 280 (fishing coble using oars to get out to sea and sails thereafter held to be a ship); *The CS Butler* (1874) LR 4 A & E 238, 2 Asp MLC 408 (lighter propelled by sails and oars on Thames held not to be a ship); *Edwards v Quickenden and Forester* [1939] P 261, 63 Ll L Rep 189 (craft propelled by oars held not to be a vessel); *Clark (Inspector of Taxes) v Perks* [2001] EWCA Civ 1228, [2001] 2 Lloyd's Rep 431, [2001] STC 1254 (jack-up drilling rig with floating hull and retractable legs held to be a ship).

The question appears to be still open whether the use to which the vessel is being put at the time of the collision or the use to which the vessel has been put is the determining factor in deciding whether a vessel is propelled by oars: see *The Champion* [1934] P 1, 47 Ll L Rep 40, DC. It would appear that either may be the determining factor in deciding whether a vessel is used in navigation: see the text and note 9.

2 *The Mac* (1882) 7 PD 126, 4 Asp MLC 555, CA.

3 Ie for the purposes of the Merchant Shipping Act 1995 s 313(1) (see the text and note 1). The cases cited in notes 4-9 were all decided under predecessor merchant shipping legislation.

4 *Southport Corp'n v Morriss* [1893] 1 QB 359, DC (electric launch exclusively used for pleasure trips on artificial lake not used in navigation); *Corbett v Pearce* [1904] 2 KB 422, DC (sprit-sail barge used on tidal waters is used in navigation); *Weeks v Ross* [1913] 2 KB 229, 12 Asp MLC 307, DC (motor boat on river used in navigation); and see *The Mac* (1882) 7 PD 126 at 131, 4 Asp MLC 555 at 558, CA, per Cotton LJ.

5 *The Mac* (1882) 7 PD 126, 4 Asp MLC 555, CA; *Wells v Gas Float Whitton No 2 (Owners)* [1897] AC 337, 8 Asp MLC 272, HL; *The Blow Boat* [1912] P 217; *Polpen Shipping Co Ltd v Commercial Union Assurance Co Ltd* [1943] KB 161, [1943] 1 All ER 162; *Marine Craft Constructors Ltd v Erland Blomquist (Engineers) Ltd* [1953] 1 Lloyd's Rep 514.

6 *The Mac* (1882) 7 PD 126, 4 Asp MLC 555, CA; *The Mudlark* [1911] P 116; *The Harlow* [1922] P 175, 15 Asp MLC 498.

7 See the cases cited in note 6.

8 *The St Machar* (1939) 65 Ll L Rep 119; *Cook v Dredging and Construction Co Ltd* [1958] 1 Lloyd's Rep 334.

9 *European and Australian Royal Mail Co Ltd v Peninsular and Oriental Steam Navigation Co* (1866) 14 LT 704 (a vessel used as a coal hulk for four years); *The Mac* (1882) 7 PD 126, 4 Asp MLC 555, CA; *Wells v Gas Float Whitton No 2 (Owners)* [1897] AC 337, 8 Asp MLC 272, HL (moored beacon); *The Harlow* [1922] P 175, 15 Asp MLC 498 (barges used in tow of tugs in carriage of goods on the Thames); *Marine Craft Constructors Ltd v Erland Blomquist Engineers Ltd* [1953] 1 Lloyd's Rep 514 (crane pontoon, stripped of its crane, and temporarily adapted for carrying goods in tow of tug).

10 As to the Secretary of State for these purposes see PARA 38.

11 For these purposes, 'shipping provision' means a provision which is made by or by virtue of an Act (including the Railways and Transport Safety Act 2003), and is expressed to apply in relation to ships, vessels or boats (or a specified class or description of ship, vessel or boat): see s 112(2); and PARA 23.

12 See the Railways and Transport Safety Act 2003 s 112(1)(a); and PARA 23. In exercise of the power conferred by s 112(1)(a), the Merchant Shipping (Prevention of Pollution) (Drilling Rigs and Other Platforms) Order 2005, SI 2005/74, has been made: see PARA 23.

13 See the Railways and Transport Safety Act 2003 s 112(1)(b); and PARA 23.

14 See the Railways and Transport Safety Act 2003 s 112(1)(c); and PARA 23.

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230. Meanings of 'British ship', 'United Kingdom fishing vessel' and 'United Kingdom ship'.

A ship¹ is a 'British ship' if:

- 355 (1) the ship is registered² in the United Kingdom³ under Part II of the Merchant Shipping Act 1995⁴; or
- 356 (2) the ship is, as a government ship⁵, registered in the United Kingdom in pursuance of an Order in Council⁶; or
- 357 (3) the ship is registered under the law of a relevant British possession⁷; or
- 358 (4) the ship is a small ship⁸ other than a fishing vessel⁹ and is not registered under Part II of the Merchant Shipping Act 1995¹⁰, but is wholly owned by qualified owners¹¹ and is not registered under the law of a country outside the United Kingdom¹².

A ship is a 'United Kingdom ship' for the purposes of the Merchant Shipping Act 1995¹³ if the ship is registered in the United Kingdom under Part II of the 1995 Act¹⁴; and 'United Kingdom fishing vessel' has¹⁵ a corresponding meaning¹⁶.

1 As to the meaning of 'ship' see PARA 229.

2 As to the meaning of 'registered' for these purposes see PARA 254 note 2.

3 As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping Act 1995 s 1(1)(a). The text refers to registration under Pt II (ss 8-23) (see PARA 245 et seq): see s 1(1)(a).

5 As to the meaning of 'government ships' see PARA 20 note 3.

6 Merchant Shipping Act 1995 s 1(1)(b). The text refers to registration in pursuance of an Order in Council under s 308 (see PARA 20): see s 1(1)(b).

7 Merchant Shipping Act 1995 s 1(1)(c). As to the meaning of 'relevant British possession' for these purposes see PARA 17 note 3.

8 For these purposes, 'small ship' means a ship less than 24 metres in length ('length' having the same meaning as in the tonnage regulations): Merchant Shipping Act 1995 s 1(2). As to the meaning of 'tonnage regulations' see PARA 248.

9 In the Merchant Shipping Act 1995, unless the context otherwise requires, 'fishing vessel' means a vessel for the time being used (or, in the context of an application for registration, intended to be used) for, or in connection with, fishing for sea fish other than a vessel used (or intended to be used) for fishing otherwise than for profit; and for these purposes, 'sea fish' includes shellfish, salmon and migratory trout, as defined by the Fisheries Act 1981 s 44 (see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 954): Merchant Shipping Act 1995 s 313(1). A vessel for the time being used (or intended to be used) wholly for the purpose of conveying persons wishing to fish for pleasure is not a fishing vessel: Merchant Shipping Act 1995 s 313(3).

10 Merchant Shipping Act 1995 s 1(1)(d)(i). The text refers to registration under Pt II (see PARA 245 et seq): see s 1(1)(d)(i).

11 Merchant Shipping Act 1995 s 1(1)(d)(ii). For these purposes, 'qualified owners' means persons of such description qualified to own British ships as is prescribed by regulations made by the Secretary of State for

these purposes: Merchant Shipping Act 1995 s 1(2). As to the Secretary of State see PARA 38; and as to his power to make subordinate legislation under the Merchant Shipping Act 1995 see PARA 41. At the date at which this volume states the law, no such regulations had been made and none have effect as if so made.

Be that as it may, in the Merchant Shipping Act 1995, except for s 9 (see PARA 245), and in any other enactment applicable to British ships or ships registered under that Act, any reference, however phrased, to the owner of a British ship, a United Kingdom ship (as to which see the text and notes 12-14) or a ship registered in the United Kingdom, means, in relation to a bareboat charter ship, the person registered as the charterer: see the Merchant Shipping (Modification of Enactments) (Bareboat Charter Ships) Order 1994, SI 1994/774, arts 2, 3 (made under the Merchant Shipping Act 1995 s 17(8): see PARA 357).

12 Merchant Shipping Act 1995 s 1(1)(d)(iii).

13 Ie except the Merchant Shipping Act 1995 s 85 (safety and health on ships) (see PARA 591) and s 144(3) (notification that a ship other than a United Kingdom ship has been detained for oil pollution offences) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 434): see s 1(3).

14 Merchant Shipping Act 1995 s 1(3). The text refers to registration under Pt II (see PARA 245 et seq): see s 1(1)(3).

15 Ie in the Merchant Shipping Act 1995 Pt V (ss 109-127) (fishing vessels) (see PARA 425 et seq): see s 1(3).

16 Merchant Shipping Act 1995 s 1(3).

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231. British flag.

The flag which every British ship¹ (other than a government ship²) is entitled to fly is the red ensign (without any defacement or modification) and³ no other colours⁴. The following are, however, also proper national colours, that is to say:

359 (1) any colours allowed to be worn in pursuance of a warrant from Her Majesty or from the Secretary of State⁵;

360 (2) in the case of British ships registered⁶ in a relevant British possession⁷, any colours consisting of the red ensign defaced or modified whose adoption for ships registered in that possession is authorised or confirmed by Her Majesty by Order in Council⁸.

Any Order under head (2) above must be laid before Parliament after being made⁹.

1 As to the meaning of 'British ship' see PARA 230; and as to the meaning of 'ship' see PARA 229.

2 The Merchant Shipping Act 1995 s 2(1) does not apply to government ships: s 2(2). As to the meaning of 'government ships' see PARA 20 note 3.

3 The subject to the Merchant Shipping Act 1995 s 2(2) (see note 2) and s 2(3) (as to which see the text and notes 5-8): see s 2(1).

4 Merchant Shipping Act 1995 s 2(1). As to the duty to show the British flag see PARA 232; and as to the duty to declare the national character of a ship see PARA 233. As to offences relating to the British character of ships see PARA 1113; and as to the penalty for carrying improper colours see PARA 1114.

5 Merchant Shipping Act 1995 s 2(3)(a). As to the Secretary of State see PARA 38.

6 As to the meaning of 'registered' for these purposes see PARA 254 note 2.

7 As to the meaning of 'relevant British possession' for these purposes see PARA 17 note 3.

8 Merchant Shipping Act 1995 s 2(3)(b). As to the making of orders under head (2) in the text, and as to the orders so made, see the text and note 9.

9 Merchant Shipping Act 1995 s 2(4). As to the making of Orders under the Merchant Shipping Act 1995 generally see PARA 41. In exercise of the power conferred by s 2(3)(b), Her Majesty has made:

66 (1) the Merchant Shipping (Gibraltar Colours) Order 1996, SI 1996/281, which came into force on 19 March 1996 (art 1), whereby the adoption for the purposes of the Merchant Shipping Act 1995 s 2(3)(b) as proper colours for ships registered in Gibraltar of the red ensign defaced with the arms of Gibraltar was authorised (Merchant Shipping (Gibraltar Colours) Order 1996, SI 1996/281, art 2(1)), the positioning and proportions of the defacement to be in accordance with art 2(2), Schedule (art 2(2)); and

67 (2) the Merchant Shipping (Falkland Islands Colours) Order 1998, SI 1998/3147, which came into force on 25 January 1999 (art 1), whereby the adoption for the purpose of the Merchant Shipping Act 1995 s 2(3)(b) as proper colours for ships registered in the Falkland Islands of the red ensign defaced with the arms of the Falkland Islands was authorised (Merchant Shipping (Falkland Islands Colours) Order 1998, SI 1998/3147, art 2(1)), the positioning and proportions of the defacement to be in accordance with the illustration in art 2(2), Schedule (art 2(2)).

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232. Duty to show British flag.

A British ship¹, other than a fishing vessel², must hoist the red ensign or other proper national colours³ in the following circumstances⁴:

- 361 (1) on a signal being made to the ship by one of Her Majesty's ships, including any ship under the command of a commissioned naval officer⁵; and
- 362 (2) on entering or leaving any foreign port⁶; and
- 363 (3) in the case of ships of 50 or more tons gross tonnage⁷, on entering or leaving any British port⁸.

1 As to the meaning of 'British ship' see PARA 230; and as to the meaning of 'ship' see PARA 229.

2 As to the meaning of 'fishing vessel' see PARA 230 note 9.

3 As to the colours which every British ship (other than a government ship) is entitled to fly see PARA 231.

4 Merchant Shipping Act 1995 s 5(1).

5 Merchant Shipping Act 1995 s 5(1)(a). As to the meaning of 'commissioned naval officer' see PARA 47 note 12.

6 Merchant Shipping Act 1995 s 5(1)(b). As to the meaning of 'port' for these purposes see PARA 46 note 12.

7 However, head (3) in the text does not apply to a small ship, as defined in the Merchant Shipping Act 1995 s 1(2) (see PARA 230 note 8), registered under Pt II (ss 8-23) (see PARA 245 et seq): s 5(2). As to the meaning of 'registered' for these purposes see PARA 254 note 2.

8 Merchant Shipping Act 1995 s 5(1)(c).

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233. Duty to declare national character of ship.

An officer of Revenue and Customs¹ must not grant a clearance or transire² for any ship³ until the master⁴ of such ship has declared to that officer the name of the nation to which he claims that the ship belongs; and that officer must thereupon enter that name on the clearance or transire⁵.

If a ship attempts to proceed to sea without such clearance or transire, the ship may be detained until the declaration is made⁶.

1 As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

2 A transire is a warrant from the custom-house to let goods pass: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1065.

3 As to the meaning of 'ship' for these purposes see PARA 229.

4 As to the meaning of 'master' for these purposes see PARA 424.

5 Merchant Shipping Act 1995 s 6(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)).

6 Merchant Shipping Act 1995 s 6(2). As to enforcing the detention of a ship see PARA 1253.

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234. Ensigns and mooring.

By Admiralty warrant, yachts belonging to members of the Royal Yacht Squadron are permitted on certain terms to carry the white ensign as worn in Her Majesty's navy¹, and, in the case of other privileged clubs, it is either the blue ensign of Her Majesty's fleet, with or without a device, or the red ensign with the distinctive marks on its fly². These privileges are in each case granted by individual warrant, and, in order to be eligible to wear such an ensign, a vessel must be registered, and must continue to belong to the individual to whom the warrant was granted, and the owner must continue as a member of the privileged club to which he belonged at the time of obtaining the warrant. Further, the owner must be on board the yacht, or in effective control of her, when she is in harbour or at anchor near the shore, and the yacht must never be used for any commercial purpose.

Yacht owners who possess Admiralty warrants are allowed the privilege of mooring at government buoys, at naval dockyard ports in the United Kingdom, as a matter of courtesy and at the discretion of the harbour master.

¹ This privilege does not confer on the yacht the status of one of Her Majesty's ships: see *HMS Glatton* [1923] P 215.

² For an illustrated list of yacht club flags see Lloyd's Register of Yachts. As to the use of the white, blue and red ensigns generally see **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 45.

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235. Proceedings on forfeiture of a ship.

Where any ship¹ has either wholly or as to any share in it become liable to forfeiture², any commissioned naval³ or military officer⁴, or any person appointed by the Secretary of State⁵ for the purpose, may seize and detain the ship and bring the ship for adjudication before the court⁶.

Where a ship is so subject to adjudication, the court may adjudge the ship and her equipment to be forfeited to Her Majesty and make such order in the case as seems just⁷.

No officer or person bringing such proceedings is liable in damages in respect of the seizure or detention of the ship, notwithstanding that the ship has not been proceeded against or, if proceeded against, adjudicated not liable to forfeiture, if the court is satisfied that there were reasonable grounds for the seizure or detention⁸. If the court is not so satisfied, the court may award costs and damages to the party aggrieved and make such other order as the court thinks just⁹.

1 As to the meaning of 'ship' for these purposes see PARA 229.

2 le under the Merchant Shipping Act 1995 Pt I (ss 1-7) (see PARAS 230 et seq, 1113, 1114): see s 7(1).

3 As to the meaning of 'commissioned naval officer' see PARA 47 note 12.

4 For these purposes, 'commissioned military officer' means a commissioned officer in Her Majesty's land forces on full pay: Merchant Shipping Act 1995 s 313(1). As to the issue of commissions in Her Majesty's land forces see **ARMED FORCES** vol 2(2) (Reissue) PARA 193.

5 As to the Secretary of State see PARA 38.

6 Merchant Shipping Act 1995 s 7(1). For these purposes, 'court' means the High Court: s 7(5). As to the jurisdiction of the High Court generally see **COURTS** vol 10 (Reissue) PARA 606 et seq.

7 Merchant Shipping Act 1995 s 7(2).

8 Merchant Shipping Act 1995 s 7(3). A seizure will not as a rule be deemed unreasonable if made in good faith: see *The Evangelismos* (1858) Sw 378, PC; *Wilson v R* (1866) LR 1 PC 405; *Burns v Nowell* (1880) 5 QBD 444, 4 Asp MLC 323, CA. The circumstances may be such that an application by the British shareholders for relief will be refused: *The Polzeath* [1916] P 117; affd [1916] P 241, 13 Asp MLC 595, CA.

9 Merchant Shipping Act 1995 s 7(4).

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(2) OWNERSHIP

(i) Acquisition of Ownership

236. Methods of acquisition.

Ownership in a British ship¹ or share in her may be acquired in any of three ways: (1) by transfer from a person entitled to transfer²; (2) by transmission; or (3) by building.

Acquisition by transfer and transmission have been the subject of statutory enactment³; acquisition by building is governed by common law⁴.

1 As to the meaning of 'British ship' see PARA 230.

2 A ship is not like an ordinary chattel which passes by delivery. A ship is a personal chattel; and specific performance of a contract to sell a ship may be decreed: *Behnke v Bede Shipping Co* [1927] 1 KB 649, 17 Asp MLC 222. See also *The Bineta, Dalby v Bineta (Owners)* [1966] 3 All ER 1007n, [1967] 1 WLR 121, [1966] 2 Lloyd's Rep 419 (sale of yacht).

3 As to transfer and transmission of ships generally see PARA 306 et seq; and as to transfer to the sheriff where execution is levied on a ship or share see *Harley v Harley* (1860) 11 I Ch R 451; *Chasteauneuf v Capeyron* (1882) 7 App Cas 127, 4 Asp MLC 489, PC; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1323.

4 As to the law relating to the passing of property in regard to the building of ships see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41(1) (2005 Reissue) PARA 130; *Sir James Laing & Sons Ltd v Barclay, Curle & Co Ltd* [1908] AC 35, 10 Asp MLC 583, HL; *Re Blyth Shipbuilding and Dry Docks Co Ltd, Forster v Blyth Shipbuilding and Dry Docks Co Ltd* [1926] Ch 494, CA; cf *McDougall v Aeromarine of Emsworth Ltd* [1958] 3 All ER 431, [1958] 1 WLR 1126, [1958] 2 Lloyd's Rep 345.

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(ii) Rights of Ownership

237. Powers of registered owner of a ship.

Subject to any rights and powers appearing from the register¹ to be vested in any other person, the registered owner of a ship² or of a share in a ship has power absolutely to dispose of it provided that the disposal is made in accordance with the private law provisions for registered ships³ and registration regulations⁴. This is not to be taken to imply that interests arising under contract or other equitable interests cannot subsist in relation to a ship or a share in a ship; and such interests may be enforced by or against owners and mortgagees of ships in respect of their interest in the ship or share in the same manner as in respect of any other personal property⁵.

The registered owner of a ship or of a share in a ship has power to give effectual receipts for any money paid or advanced by way of consideration on any disposal of the ship or share⁶.

Any document authorised or required by or under any enactment to be served on the registered owner of a United Kingdom ship⁷ is to be treated as duly served on him if served on such persons, in such circumstances and by such method, as may be specified in registration regulations⁸.

1 As to the meaning of 'register' see PARA 254 note 2.

2 As to the meaning of 'ship' see PARA 229.

3 For the purposes of the Merchant Shipping Act 1995 Pt II (ss 8-23), 'the private law provisions for registered ships' means the provisions of s 16(1), Sch 1 (as to which see PARAS 306, 318, 321, 323-324, 328, 333, 335) and registration provisions made for the purposes of Sch 1 or the provisions of registration regulations made under s 10(4)(a) (as to which see PARA 247): ss 16(6), 23(1). As to the application of Sch 1 see PARA 252. As to the meaning of 'registration regulations' see PARA 247.

4 Merchant Shipping Act 1995 Sch 1 para 1(1).

5 Merchant Shipping Act 1995 Sch 1 para 1(2).

6 Merchant Shipping Act 1995 Sch 1 para 1(3).

7 As to the meaning of 'United Kingdom ship' see PARA 230.

8 Merchant Shipping Act 1995 s 291(6). As to the service of documents under the Merchant Shipping Act 1995 generally see s 291; and PARA 73.

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238. Managing owner.

Part owners sometimes delegate authority in respect of the managing of the ship to one of their number, who is known as the managing owner¹. The managing owner is agent for all the other owners², with power to do what is necessary to enable the ship to prosecute her voyage and to earn freight³.

1 The term 'managing owner' is used in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 23 (appointment of managing owner where ship has more than one owner) (as to which see PARA 271) and in reg 34 (verification of details and marks) (see PARA 287), but it is not defined. It is a commercial and not a legal expression: see *Frazer v Cuthbertson* (1880) 6 QBD 93 at 98 per Bowen J. A person who is not a part owner may exercise the functions of a managing owner, in which case he is known as a 'ship's husband'.

2 *The Ida* (1886) 6 Asp MLC 21 (managing owner received contributions from one part owner as agent for all the rest).

3 As to the general powers of a managing owner in regard to the working of the ship and the ordering of the necessary supplies and repairs see *Card v Hope* (1824) 2 B & C 661; *Thompson v Finden* (1829) 4 C & P 158; *Green v Briggs* (1848) 6 Hare 395; *Darby v Baines* (1851) 9 Hare 369; *Whitwell v Perrin* (1858) 4 CBNS 412; *Ritchie v Couper* (1860) 28 Beav 344; *Barker v Highley* (1863) 15 CBNS 27; *Vanner v Frost* (1870) 39 LJ Ch 626; *The Huntsman* [1894] P 214, 7 Asp MLC 431. See also *Sims v Brittain* (1832) 4 B & Ad 375 (rights of part owners against agents appointed by managing owners); *Steele & Co v Dixon* (1876) 3 R 1003 (no authority to order structural alterations); *Swanston v Lishman* (1881) 4 Asp MLC 450, CA (practice as to discovery where managing owner is a member of a firm); *The Charles Jackson* (1885) 5 Asp MLC 399 (claims by managing owner to recover sums he had not paid allowed in settlement of accounts with other co-owners, but subject to stay of execution until such co-owners protected against claims of third persons in respect of those sums); *The Meredith* (1885) 10 PD 69, 5 Asp MLC 400 (right to reasonable remuneration); *The Bellcairn* (1886) 5 Asp MLC 582 (authority to take legal proceedings); *Ocean Iron Steamship Insurance Association Ltd v Leslie* (1887) 6 Asp MLC 226 (authority to make co-owners liable for calls in a mutual insurance association); *Williamson v Hine* [1891] 1 Ch 390, sub nom *Williamson v Hine Bros* 6 Asp MLC 559 (apart from special agreement a shipbroker who is also managing owner, receiving as such a fixed remuneration and whose duties include procuring charters and freights, cannot as shipbroker make extra profit for himself by commission or brokerage for obtaining charters and freights); *The Mount Vernon* (1891) 7 Asp MLC 32 (managing owner must account within reasonable time); *Nicol v Hennessy* (1896) 1 Com Cas 410 (managing owner selling shares in a ship which do not belong to him impliedly covenants to pay actual value of shares to the true owner); *Doeg v Trist* (1897) 2 Com Cas 153 (ship's husband cannot delegate his authority without sanction of owners, or pledge their credit unnecessarily).

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239. Distribution of profits.

Profits are distributed in accordance with any agreement between part owners, or in accordance with the interest of each partner in the ship¹. Before profits are distributed, the sum earned by the ship must be applied to meet expenses²; and no partner is entitled to a share of the profits unless he has contributed his proper share of the capital³. A purchaser of a share in a ship which is at the time of the purchase engaged on a voyage is entitled to a share of the freight earned on that voyage, but is liable for a share of the expenses of earning it⁴.

1 See the cases cited in PARA 238 note 3. A part owner may in certain circumstances be entitled to sue for his share of profits, even though they accrue from an illegal voyage: *Sharp v Taylor* (1849) 2 Ph 801 (but dicta in that case were doubted in *Sykes v Beadon* (1879) 11 ChD 170 at 195, 196 per Jessel MR); cf **CONTRACT** vol 9(1) (Reissue) PARA 883. As to the liabilities of part owners see PARA 244.

2 *Green v Briggs* (1848) 6 Hare 395. These include wages (*Lindsay v Gibbs* (1859) 3 De G & J 690), and in some cases insurance (*Ogle v Wrangham* (1790) cited in Abbott's Law of Merchant Ships and Seamen (14th Edn) 130; *Hooper v Lusby* (1814) 4 Camp 66). As to the liability of the shipowner for wages see PARA 243.

3 *Green v Briggs* (1848) 6 Hare 395. Money spent on repairs by one partner is to be treated as capital: *Green v Briggs*.

4 *The Vindobala* (1889) 14 PD 50, 6 Asp MLC 376, CA. A purchaser is not liable where the seller is not in a position to complete the transfer of the ship: *The Bonnie Kate* (1887) 6 Asp MLC 149. As to the transfer of ships generally see PARA 306 et seq.

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240. Control of ship.

The right to the possession and control of the ship lies with the majority owners. Where the majority owners desire to send the ship on a particular voyage, but she is in the possession of a dissenting minority, the majority owners may arrest the ship and obtain from the court¹ a decree of possession, so that they may be enabled to employ the ship as they wish².

Similarly, where the minority owners object to the voyage on which it is proposed the ship shall be sent, they may arrest her and sue for an order that she be restrained³ from pursuing the voyage⁴.

In either of these cases, before the majority owners are permitted to send the ship on the desired voyage, they will be compelled to give security for the safe return of the vessel⁵.

Where the minority owners object to the prosecution of a particular voyage, they are not obliged to contribute to the expenses of the voyage, but conversely will not be entitled to any of the profits⁶.

1 As to the court's powers in its dealings with the ownership of vessels see also PARA 94. The court will require persons seeking to dispossess others to prove their title to a majority of shares: *The Valiant* (1839) 1 Wm Rob 64; *The Victoria* (1859) Sw 408.

2 *The New Draper* (1802) 4 Ch Rob 287; *The Kent* (1862) Lush 495.

3 As to the court's powers to restrain dealings at the instance of minority co-owners see PARA 107.

4 *The Talca* (1880) 5 PD 169, 4 Asp MLC 226; *The England* (1886) 12 PD 32, 6 Asp MLC 140. The court does not interfere to alter the possession of the ship unless such an alteration is sought by the majority of the owners: *The Egyptienne* (1825) 1 Hag Adm 346n; *The Elizabeth and Jane* (1841) 1 Wm Rob 278. The right to arrest is not affected by the fact that the charterparty under which the ship is about to sail was negotiated by the ship's husband appointed by the whole of the owners: *The Talca*; *The England*. The authority to charter the ship must, however, have been withdrawn from the managing owner before the charterparty was entered into: *The Vindobala* (1889) 14 PD 50, 6 Asp MLC 376, CA. A foreign vessel may not be arrested at the suit of an English part owner, except possibly where the law of the foreign country is the same as that of England: *The Keroula* (1886) 11 PD 92, 6 Asp MLC 23. The court does not enter upon questions of ownership of a foreign ship where foreigners are alone concerned, unless by consent of the parties or upon the intervention of the representative of a foreign state: *The Johan and Siegmund* (1810) Edw 241; *The See Reuter* (1811) 1 Dods 22; *The Evangelistria* (1876) 2 PD 241, 3 Asp MLC 264; *The Agincourt* (1877) 2 PD 239; *The Annette, The Dora* [1919] P 105. A mortgagee of a ship or share cannot as such bring a restraint action: *The Innisfallen* (1866) LR 1 A & E 72. An equitable owner may probably do so: *Von Freeden v Hull* (1907) 10 Asp MLC 247 (revsd on appeal 10 Asp MLC 394, CA). A master cannot now be regarded as having possession of the ship and cargo as a bailee: *The Jupiter (No 3)* [1927] P 122 (affd [1927] P 250, 17 Asp MLC 250, CA). As to the position of mortgagees see PARA 327 et seq.

5 *The Apollo* (1824) 1 Hag Adm 306. The giving of a bail bond does not prevent the majority owners from subsequently disputing the right of the minority owners to have arrested the vessel: *The Keroula* (1886) 11 PD 92, 6 Asp MLC 23. The amount of the security given must bear the same relation to the value of the vessel as does the number of shares held by the minority owners to the whole number of shares in the ship: *The Cawdor* (1898) 8 Asp MLC 475; and see *The Robert Dickinson* (1884) 10 PD 15, 5 Asp MLC 341. The minority owners may not rearrest until the ship has returned to the port to which her safe return is pledged: *The Regalia* (1884) 5 Asp MLC 338. The sureties will be released after a reasonable time: *The Vivienne* (1887) 12 PD 185, 6 Asp MLC 178.

6 *The England* (1886) 12 PD 32, 6 Asp MLC 140; *The Cawdor* (1898) 8 Asp MLC 475.

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241. Court order for sale of ship.

In certain cases the court will order the sale of the ship, but a strong case must be made out even by majority owners, while the court will be extremely reluctant to make such an order at the instance of minority owners¹. In a proper case, however, the court will order a sale at the instance of minority owners².

In proper cases the court may order an account to be taken between co-owners³.

1 *The Nelly Schneider* (1878) 3 PD 152, 4 Asp MLC 54; *The Marion* (1884) 10 PD 4, 5 Asp MLC 339. See also PARA 107.

2 *The Hereward* [1895] P 284, 8 Asp MLC 22 (where the majority owners had changed the character of the ownership by transferring the shares to a limited company). The dictum of Bruce J in this case that the majority had no right thus to change the character of the ownership was criticised by Gorell Barnes J in *The Loughborough* (1904) Shipping Gazette, 20 December.

3 As to the court's power to order accounts and sale see the Supreme Court Act 1981 s 20(2)(b), (4) and PARA 106. The court has ordered accounts to be taken of transactions taking place before this jurisdiction was conferred on it by the Admiralty Court Act 1861 s 8 (repealed) (*The Idas* (1863) Brown & Lush 65); and between a part owner and one who had ceased to be a part owner by selling his share (*The Lady of the Lake* (1870) LR 3 A & E 29). The court has also ordered the earnings of the ship in the hands of third persons to be brought into court pending the settlement of a dispute: *The Meggie* (1866) LR 1 A & E 77.

UPDATE

241 Court order for sale of ship

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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(iii) Liabilities

242. Liability on bills of lading.

The general rule is that prima facie a bill of lading signed by the master is signed by him as the employee or agent of the shipowner, and the owner is liable on such bills of lading¹. A mere reference in bills of lading to a charterparty which contains a clause that the master should be the employee of the charterer does not amount to notice to the holders of such bills that the master is not the owner's employee². The owner is not, however, liable on bills of lading signed by a master who is not his employee and who has no authority to pledge his credit, even though the shipper has no notice of the charterparty³.

1 *Manchester Trust v Furness* [1895] 2 QB 539 at 543, 8 Asp MLC 57 at 60, CA, per Lindley LJ. See also *Steel v Lester and Lilee* (1877) 3 CPD 121, 3 Asp MLC 537; and **CARRIAGE AND CARRIERS**. As to the liability of a shipowner on bills of lading signed on his behalf by a charterer see *Homburg Houtimport BV v Agrosin Private Ltd, The Starsin* [2003] UKHL 12, [2004] 1 AC 715, [2003] 1 All ER (Comm) 625.

2 *Manchester Trust v Furness* [1895] 2 QB 539, 8 Asp MLC 57, CA.

3 *Baumwoll Manufactur von Carl Scheibler v Furness* [1893] AC 8, 7 Asp MLC 263, HL; cf *Associated Portland Cement Manufacturers (1910) Ltd v Ashton* [1915] 2 KB 1, 13 Asp MLC 40, CA (where a co-owner of a ship took one-third of the gross profits and provided for upkeep and insurance while the master took two-thirds, out of which he paid the crew's wages, bought the ship's provisions, and met the expenses of the voyage; it was held that a charterparty made by the master was made by him as agent of the owner). As to the authority and liability of the master generally see PARA 429 et seq; and as to charterparties and bills of lading generally see **CARRIAGE AND CARRIERS**.

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243. Liability for wages.

The owner of a ship is liable for seamen's wages, even though the seamen have in fact been engaged by a master who is the charterer's employee¹. Where, however, a ship is chartered by demise, the owner is not liable in respect of an allotment note drawn by the master on the charterer².

1 See *Re Great Eastern Steamship Co, Williams' Claim* (1885) 5 Asp MLC 511. The decision in this case only refers to the case of seamen discharged before the ship sailed, there having been no written agreement, but it is submitted that the principle may be applied in other circumstances. As to seamen's wages generally see PARA 464 et seq.

2 *Meiklereid v West* (1876) 1 QBD 428, 3 Asp MLC 129, DC; cf the liability on bills of lading (as to which see PARA 242). As to allotment notes see PARAS 473, 474. As to charterparties by demise see **CARRIAGE AND CARRIERS**. In the case of a charterparty not amounting to a demise, where the master is the charterer's employee, it seems that the owner is not liable on bills of lading signed by the master, but is still liable for the seamen's wages.

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244. Liability as between part owners.

Persons owning shares in a ship are tenants in common¹. They may or may not be partners also²; and, whether they are or are not in fact partners, they may for certain purposes be treated as such³. An agreement between part owners relating to the employment of the ship, as opposed to her ownership, renders them partners in all matters relating to the employment so agreed upon⁴.

A part owner is not bound in respect of liabilities incurred by another part owner in regard to the ship, unless he has given authority⁵ to the other to contract liabilities on his behalf or has held out the other as having that authority⁶, or has ratified the specific acts of the other⁷ which have given rise to liability⁸.

1 *Ex p Young* (1813) 2 Rose 78n; *R v Collector of Customs, Liverpool* (1813) 2 M & S 223; *Re Nicholson, ex p Harrison* (1814) 2 Rose 76; *Helme v Smith* (1831) 7 Bing 709; *Re Drury and Hudson, ex p Leslie* (1833) 3 LJ Bcy 4; *Green v Briggs* (1848) 6 Hare 395; *Frazer v Cuthbertson* (1880) 6 QBD 93.

2 *Helme v Smith* (1831) 7 Bing 709; *Brodie v Howard* (1855) 17 CB 109. Persons may also be joint owners of a share: see *Ex p Jones* (1816) 4 M & S 450. As to joint ownership giving rise to a partnership see **PARTNERSHIP** vol 79 (2008) PARAS 10-13.

3 Eg in regard to statutes of limitation, such statutes do not run between co-owners while the co-ownership exists, the existence of co-ownership being in each case a question of fact: *The Pongola* (1895) 8 Asp MLC 89. See also **LIMITATION PERIODS**.

4 *Holderness v Shackels* (1828) 8 B & C 612; *Helme v Smith* (1831) 7 Bing 709; *Green v Briggs* (1848) 6 Hare 395.

5 Agency is a question of fact: *Chappell v Bray* (1860) 6 H & N 145.

6 *Frazer v Cuthbertson* (1880) 6 QBD 93. A registered owner will not be bound by the acts of a part owner merely because the latter appears on the register as a managing owner: *Frazer v Cuthbertson* at 98, 99. As to managing owners see PARA 238. Where a part owner has once constituted another his agent for the management of the ship, he must, if he desires to withdraw such authority, do so in some effectual manner: *The Vindobala* (1889) 14 PD 50, 6 Asp MLC 376, CA; *Von Freeden v Hull* (1907) 10 Asp MLC 247 at 394, CA. As to the power of one part owner to recover expenses of insurance from another see *Ogle v Wrangham* (1790) cited in *Abbott's Law of Merchant Ships and Seamen* (14th Edn) 130; *Hooper v Lusby* (1814) 4 Camp 66. See also *Ocean Iron Steamship Insurance Association Ltd v Leslie* (1887) 6 Asp MLC 226. As to mutual insurance associations see **INSURANCE** vol 25 (2003 Reissue) PARAS 517-522.

7 *Keay v Fenwick* (1876) 1 CPD 745, CA.

8 *Brodie v Howard* (1855) 17 CB 109 (repairs).

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(3) REGISTRATION

(i) In general

A. ENTITLEMENT TO REGISTER

245. Basic registration provisions.

A ship¹ is entitled to be registered² if:

- 364 (1) it is owned, to the prescribed extent³, by persons qualified to own British ships⁴; and
- 365 (2) such other conditions are satisfied as are prescribed⁵ to secure that, taken in conjunction with the requisite ownership, only ships having a British connection are registered⁶,

and any application for registration is duly made⁷.

The registrar⁸ may nevertheless, if registration regulations so provide, refuse to register or terminate the registration of a ship if, having regard to any relevant requirements of the Merchant Shipping Act 1995⁹, he considers it would be inappropriate for the ship to be or, as the case may be, to remain registered¹⁰.

However, the registrar may, if registration regulations so provide, register a fishing vessel¹¹, notwithstanding that the requirement of head (1) above is not satisfied in relation to a particular owner of a share in the vessel if the vessel otherwise has a British connection¹².

Where a ship becomes registered at a time when it is already registered under the law of a country other than the United Kingdom¹³, the owner of the ship must take all reasonable steps to secure the termination of the ship's registration under the law of that country¹⁴; but this provision does not apply to a ship which becomes registered on a transfer of registration to the register¹⁵ from a relevant British possession¹⁶. Any person who contravenes¹⁷ this provision¹⁸ commits an offence¹⁹.

1 As to the meaning of 'ship' see PARA 229.

2 As to the meaning of 'registered' for these purposes see PARA 254 note 2.

3 It is for registration regulations: (1) to determine the persons who are qualified to be owners of British ships, or British ships of any class or description, and to prescribe the extent of the ownership required for compliance with the Merchant Shipping Act 1995 s 9(1)(a) (see head (1) in the text) (s 9(2)(a)); (2) to prescribe other requirements designed to secure that, taken in conjunction with the requisite ownership, only ships having a British connection are registered (s 9(2)(b)). For the purposes of Pt II (ss 8-23), references to a ship's having a British connection are references to compliance with the conditions of entitlement imposed by s 9(1)(a), (b) (see heads (1) and (2) in the text); and 'declaration of British connection' is to be construed accordingly: ss 9(9), 23(1). As to the meaning of 'British ship' see PARA 230. As to the registration regulations see PARA 247.

4 Merchant Shipping Act 1995 s 9(1)(a). As to the meaning of 'qualified owners' see PARA 230 note 11. Where, for the purposes of any enactment, the question arises whether a ship is owned by persons qualified to own British ships, the question is to be determined by reference to the registration regulations under s 9(2)(a) (see note 3 head (1)): s 23(2).

- 5 le under the Merchant Shipping Act 1995 s 9(2)(b) (see note 3 head (2)): see s 9(1)(b).
- 6 Merchant Shipping Act 1995 s 9(1)(b), (2)(b).
- 7 Merchant Shipping Act 1995 s 9(1). As to applications for registration see PARA 269 et seq. Any reference in an enactment in any other Act, not amended by Sch 13, or in any instrument made under any other Act to the registration of a ship, or fishing vessel, under the Merchant Shipping Act 1894 Pt I (ss 1-91) (repealed), the Merchant Shipping Act 1983 s 5 (repealed), the Merchant Shipping Act 1988 s 13 (repealed) or the Merchant Shipping (Registration, etc) Act 1993 s 1 (repealed) is to be construed, unless the context otherwise requires, as, or as including, a reference to registration under the Merchant Shipping Act 1995 Pt II (ss 8-23); and connected phrases are to be construed accordingly: s 314(3), Sch 14 para 2.
- 8 As to the meaning of 'registrar' for these purposes see PARA 254 note 11.
- 9 For these purposes, 'the relevant requirements of the Merchant Shipping Act 1995' means the requirements of that Act, including requirements falling to be complied with after registration, relating to: (1) the condition of ships or their equipment, so far as relevant to their safety or any risk of pollution (s 9(8)(a)); and (2) the safety, health and welfare of persons employed or engaged in them (s 9(8)(b)).
- 10 Merchant Shipping Act 1995 s 9(3).
- 11 As to the meaning of 'fishing vessel' see PARA 230 note 9. As to offences in relation to fishing vessels not registered under the Merchant Shipping Act 1995 see PARA 1117.
- 12 Merchant Shipping Act 1995 s 9(4).
- 13 As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 14 Merchant Shipping Act 1995 s 9(5).
- 15 As to the meaning of 'register' see PARA 254 note 2.
- 16 Merchant Shipping Act 1995 s 9(6). As to the meaning of 'relevant British possession' for these purposes see PARA 17 note 3.
- 17 As to the meaning of 'contravention' see PARA 50 note 3.
- 18 le the Merchant Shipping Act 1995 s 9(5) (see the text and notes 13-14): see s 9(7).
- 19 See the Merchant Shipping Act 1995 s 9(7); and PARA 1115.

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246. Regulation of registration in British possessions by reference to categories of registries.

Her Majesty may by Order in Council make provision for regulating the registration in relevant British possessions¹ of ships² other than small ships³ and fishing vessels⁴ by reference to categories of registries established by the Order⁵.

Any such Order may:

- 366 (1) establish different categories of registries to which different restrictions on the registration of ships in such possessions apply, being restrictions framed by reference to: (a) ships' tonnage⁶; or (b) types of ships⁷; or (c) any other specified matter⁸; or (d) any combination of matters falling within one or more of heads (a) to (c) above⁹, as well as a category of registries to which no such restriction applies¹⁰;
- 367 (2) assign any relevant British possession to such one of the categories so established as appears to Her Majesty to be appropriate¹¹;
- 368 (3) provide that, where a relevant British possession has been assigned to a category to which any such restriction on registration as is mentioned in head (1) above applies, no ship covered by that restriction is to be registered under the law of that possession¹²;
- 369 (4) specify circumstances in which ships may be exempted from any provision made by virtue of head (3) above¹³.

1 As to the meaning of 'relevant British possession' for these purposes see PARA 17 note 3.

2 As to the meaning of 'ship' see PARA 229.

3 For these purposes, 'small ship' has the meaning given by the Merchant Shipping Act 1995 s 1(2) (see PARA 230 note 8): s 18(5).

4 As to the meaning of 'fishing vessel' see PARA 230 note 9. As to offences in relation to fishing vessels not registered under the Merchant Shipping Act 1995 see PARA 1117.

5 Merchant Shipping Act 1995 s 18(1). An Order in Council under s 18 may make such transitional, incidental or supplementary provision as appears to Her Majesty to be necessary or expedient: s 18(4).

In exercise of the powers conferred by s 18, Her Majesty has made the Merchant Shipping (Categorisation of Registries of Relevant British Possessions) Order 2003, SI 2003/1248 (amended by SI 2005/2114; SI 2008/1243).

6 Merchant Shipping Act 1995 s 18(2)(a)(i).

7 Merchant Shipping Act 1995 s 18(2)(a)(ii).

8 Merchant Shipping Act 1995 s 18(2)(a)(iii).

9 Merchant Shipping Act 1995 s 18(2)(a)(iv).

10 Merchant Shipping Act 1995 s 18(2)(a).

11 Merchant Shipping Act 1995 s 18(2)(b).

12 Merchant Shipping Act 1995 s 18(2)(c). Any provision made by virtue of s 18(2)(c) must be expressed to be without prejudice to the operation of any provision for the time being in force under the law of any such

possession as is mentioned in s 18(2)(c) by virtue of which the registration of ships in that possession is, or may be, further restricted: s 18(3).

13 Merchant Shipping Act 1995 s 18(2)(d).

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B. REGISTRATION REGULATIONS

247. Power to make registration regulations.

The Secretary of State¹ must by regulations ('registration regulations') make provision for and in connection with the registration of ships² as British ships³. Without prejudice to the generality of this provision, registration regulations may in particular make provision with respect to any of the following matters:

- 370 (1) the persons by whom and the manner in which applications in connection with registration are to be made⁴;
- 371 (2) the information and evidence (including declarations of British connection⁵) to be provided in connection with such applications and such supplementary information or evidence as may be required by any specified authority⁶;
- 372 (3) the shares in the property in, and the numbers of owners (including joint owners) of, a ship permitted for the purposes of registration and the persons required or permitted to be registered⁷ in respect of a ship or to be so registered in specified circumstances⁸;
- 373 (4) the issue of certificates (including provisional certificates) of registration, their production and surrender⁹;
- 374 (5) restricting and regulating the names of ships registered or to be registered¹⁰;
- 375 (6) the marking of ships registered or to be registered, including marks for identifying the port¹¹ to which a ship is to be treated as belonging¹²;
- 376 (7) the period for which registration is to remain effective without renewal¹³;
- 377 (8) the production to the registrar¹⁴ of declarations of British connection or other information relating thereto, as respects registered ships, at specified intervals or at his request¹⁵;
- 378 (9) the survey and inspection of ships registered or to be registered and the recording of their tonnage as ascertained, or reascertained, under the tonnage regulations¹⁶;
- 379 (10) the refusal, suspension and termination of registration in specified circumstances¹⁷;
- 380 (11) matters arising out of the expiration, suspension or termination of registration, including the removal of marks and the cancellation of certificates¹⁸;
- 381 (12) the charging of fees in connection with registration or registered ships¹⁹;
- 382 (13) the transfer of the registration of ships to and from the register²⁰ from and to registers or corresponding records in countries other than the United Kingdom²¹;
- 383 (14) inspection of the register²²;
- 384 (15) any other matter which is authorised or required by the provisions relating to the registration of ships²³ to be prescribed in registration regulations²⁴.

However, no provision determining, or providing for determining, the fees to be charged or prescribing any arrangements for their determination by other persons may be made without the approval of the Treasury²⁵.

Registration regulations may:

- 385 (a) make different provision for different classes or descriptions of ships and for different circumstances²⁶;
- 386 (b) without prejudice to head (a) above, make provision for the granting of exemptions or dispensations by the Secretary of State from specified requirements of the regulations, subject to such conditions, if any, as he thinks fit to impose²⁷; and
- 387 (c) make such transitional, incidental or supplementary provision as appears to the Secretary of State to be necessary or expedient, including provision authorising investigations and conferring powers of inspection for verifying the British connection of a ship²⁸.

Registration regulations:

- 388 (i) may make provision for the registration of any class or description of ships to be such as to exclude the application of the private law provisions for registered ships²⁹ and, if they do, may regulate the transfer, transmission or mortgaging of ships of the class or description so excluded³⁰;
- 389 (ii) may make provision for any matter which is authorised or required by those provisions to be prescribed by registration regulations³¹; and
- 390 (iii) must make provision precluding notice of any trust being entered in the register or being receivable by the registrar except as respects specified classes or descriptions of ships or in specified circumstances³².

Registration regulations may:

- 391 (A) create offences subject to the limitation that no offence is to be punishable with imprisonment or punishable on summary conviction with a fine exceeding level 5 on the standard scale³³;
- 392 (B) provide for the approval of forms by the Secretary of State and for the discharge of specified functions by specified authorities or persons³⁴;
- 393 (C) provide for any of their provisions to extend to places outside the United Kingdom³⁵;
- 394 (D) provide that any reference in any other Act or in any instrument made under any other Act to the port of registry or the port to which a ship belongs is to be construed as a reference to the port identified by the marks required for the purpose by registration regulations³⁶.

Any document purporting to be a copy of any information contained in an entry in the register and to be certified as a true copy by the registrar is evidence of the matters stated in the document³⁷.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'ship' see PARA 229.

3 Merchant Shipping Act 1995 s 10(1). As to the meaning of 'British ship' see PARA 230. At the date at which this volume states the law, no such regulations had been made under s 10(1) but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138 (as to which see PARA 255 et seq) have effect as if so made. As to the Secretary of State's power to make regulations under the Merchant Shipping Act 1995 generally see PARA 41.

4 Merchant Shipping Act 1995 s 10(2)(a).

5 As to the meaning of 'declaration of British connection' see PARA 245 note 3.

6 Merchant Shipping Act 1995 s 10(2)(b). Any notice authorised or required by or under Pt II (ss 8-23) (see PARAS 245 et seq, 248 et seq) to be served on the Secretary of State may be served by post: s 291(4). As to the service of documents under the Merchant Shipping Act 1995 generally see s 291; and PARA 73.

7 As to the meaning of 'registered' for these purposes see PARA 254 note 2.

8 Merchant Shipping Act 1995 s 10(2)(c).

9 Merchant Shipping Act 1995 s 10(2)(d).

10 Merchant Shipping Act 1995 s 10(2)(e).

11 As to the meaning of 'port' see PARA 46 note 12.

12 Merchant Shipping Act 1995 s 10(2)(f).

13 Merchant Shipping Act 1995 s 10(2)(g).

14 As to the meaning of 'registrar' see PARA 254 note 11.

15 Merchant Shipping Act 1995 s 10(2)(h).

16 Merchant Shipping Act 1995 s 10(2)(i). As to the tonnage regulations see PARA 248.

17 Merchant Shipping Act 1995 s 10(2)(j).

18 Merchant Shipping Act 1995 s 10(2)(k).

19 Merchant Shipping Act 1995 s 10(2)(l).

20 As to the meaning of 'register' for these purposes see PARA 254 note 2.

21 Merchant Shipping Act 1995 s 10(2)(m). As to the meaning of 'United Kingdom' see PARA 17 note 3.

22 Merchant Shipping Act 1995 s 10(2)(n).

23 Ie by the Merchant Shipping Act 1995 Pt II (see PARAS 245 et seq, 248 et seq): see s 10(2)(o).

24 Merchant Shipping Act 1995 s 10(2)(o).

25 Merchant Shipping Act 1995 s 10(2). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

26 Merchant Shipping Act 1995 s 10(3)(a).

27 Merchant Shipping Act 1995 s 10(3)(b).

28 Merchant Shipping Act 1995 s 10(3)(c).

29 As to the meaning of 'the private law provisions for registered ships' for these purposes see PARA 237 note 3.

30 Merchant Shipping Act 1995 s 10(4)(a).

31 Merchant Shipping Act 1995 s 10(4)(b).

32 Merchant Shipping Act 1995 s 10(4)(c).

33 Merchant Shipping Act 1995 s 10(5). As to the meaning of 'standard scale, and as to the prosecution of offences generally, see PARA 1100.

34 Merchant Shipping Act 1995 s 10(6).

35 Merchant Shipping Act 1995 s 10(7).

36 Merchant Shipping Act 1995 s 10(9).

37 Merchant Shipping Act 1995 s 10(8).

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C. THE TONNAGE REGULATIONS

248. Tonnage regulations.

The tonnage of any ship¹ to be registered under Part II of the Merchant Shipping Act 1995² must be ascertained in accordance with regulations ('tonnage regulations') made by the Secretary of State³.

Tonnage regulations may:

- 395 (1) make different provisions for different descriptions of ships or for the same description of ships in different circumstances⁴;
- 396 (2) make any regulation dependent on compliance with such conditions, to be evidenced in such manner, as may be specified in the regulations⁵;
- 397 (3) prohibit or restrict the carriage of goods or stores in spaces not included in the registered tonnage and may provide for making the master⁶ and the owner each liable to a fine not exceeding level 3 on the standard scale⁷ where such a prohibition or restriction is contravened⁸.

Tonnage regulations may make provision:

- 398 (a) for assigning to a ship, either instead of or as an alternative to the tonnage ascertained in accordance with the other provisions of the regulations, a lower tonnage applicable where the ship is not loaded to the full depth to which it can safely be loaded⁹;
- 399 (b) for indicating on the ship, by such mark as may be specified in the regulations, that such a lower tonnage has been assigned to it¹⁰; and
- 400 (c) where the lower tonnage has been assigned to it as an alternative, for indicating on the ship the depth to which the ship may be loaded for the lower tonnage to be applicable¹¹.

Tonnage regulations may:

- 401 (i) provide for the measurement and survey of ships to be undertaken, in such circumstances as may be specified in the regulations, by persons appointed by such organisations as may be authorised for the purpose by the Secretary of State¹²;
- 402 (ii) provide for the issue, by the Secretary of State or by persons appointed by such organisations as may be authorised for the purpose by the Secretary of State, of certificates of the registered tonnage of any ship or of the tonnage which is to be taken for any purpose specified in the regulations as the tonnage of a ship not registered in the United Kingdom¹³, and for the cancellation and delivery up of such certificates in such circumstances as may be prescribed by the regulations¹⁴.

Regulations requiring the delivery up of any certificate may make a failure to comply with the requirement an offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale¹⁵.

- 1 As to the meaning of 'ship' see PARA 229.
- 2 le under the Merchant Shipping Act 1995 Pt II (ss 8-23) (see PARAS 245 et seq, 249 et seq): see s 19(1). As to the meaning of 'registered' for these purposes see PARA 254 note 2.
- 3 Merchant Shipping Act 1995 s 19(1). As to the Secretary of State see PARA 38. As to the regulations so made under s 19(1) see the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510 (amended by SI 1998/1916; SI 1999/3206; SI 2005/2114). By virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Increased Penalties) Regulations 1979, SI 1979/1519 (an amending provision) and Merchant Shipping (Fishing Vessels - Tonnage) Regulations 1988, SI 1988/1909 (amended by SI 1998/1916; SI 1999/3206) also have effect as if made under the Merchant Shipping Act 1995 s 19. As to the Secretary of State's power to make regulations under the Merchant Shipping Act 1995 generally see PARA 41.
- 4 Merchant Shipping Act 1995 s 19(2)(a).
- 5 Merchant Shipping Act 1995 s 19(2)(b).
- 6 As to the meaning of 'master' see PARA 424.
- 7 As to the meaning of 'standard scale', and as to the prosecution of offences generally, see PARA 1099 et seq.
- 8 Merchant Shipping Act 1995 s 19(2)(c). As to the meaning of 'contravention' see PARA 50 note 3.
- 9 Merchant Shipping Act 1995 s 19(3)(a).
- 10 Merchant Shipping Act 1995 s 19(3)(b).
- 11 Merchant Shipping Act 1995 s 19(3)(c).
- 12 Merchant Shipping Act 1995 s 19(4).
- 13 As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 14 Merchant Shipping Act 1995 s 19(5). As to the Secretary of State's power to make regulations prescribing fees to be charged in respect of the issue or recording of any certificate, licence or other document see PARA 62.
- 15 Merchant Shipping Act 1995 s 19(6).

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249. Tonnage ascertained for registration to be tonnage of ship.

When the tonnage of any ship¹ has been ascertained and registered in accordance with the tonnage regulations², that tonnage is to be treated as the tonnage of the ship except so far as registration regulations³ provide, in specified circumstances, for the ship to be remeasured and the register⁴ amended accordingly⁵.

1 As to the meaning of 'ship' see PARA 229.

2 As to the meaning of 'tonnage regulations' see PARA 248.

3 As to the meaning of 'registration regulations' see PARA 247.

4 As to the meaning of 'register' for these purposes see PARA 254 note 2.

5 Merchant Shipping Act 1995 s 11. As to the tonnage of ships of foreign countries adopting the tonnage regulations see PARA 250.

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250. Tonnage of ships of foreign countries adopting the tonnage regulations.

Her Majesty may by Order in Council make such provision in relation to the ships¹ of a foreign country as is authorised in the following way² where it appears to Her that the tonnage regulations³ have been adopted by the foreign country and are in force there⁴.

Such an Order may order that the ships of the foreign country must, without being remeasured in the United Kingdom⁵, be treated as being of the tonnage denoted by their certificates of registration or other national papers, to the same extent, and for the same purposes as the tonnage denoted in the certificate of registration of a United Kingdom ship⁶ is treated as being the tonnage of that ship⁷.

Where such an Order is in force in relation to the ships of any country, any space shown in the ship's certificate of registration or other national papers as deducted from the tonnage is to be treated, if a similar deduction in the case of a United Kingdom ship depends on compliance with any conditions or on the compliance being evidenced in any manner, as complying with those conditions and as being so evidenced, unless a surveyor of ships⁸ certifies to the Secretary of State⁹ that the construction and equipment of the ship as respects that space do not come up to the standard which would be required if the ship were a United Kingdom ship¹⁰.

Any such Order may operate for a limited time and may be subject to such conditions and qualifications, if any, as Her Majesty may consider expedient¹¹.

If it appears to Her Majesty that the tonnage of any foreign¹² ship, as measured by the rules of the country to which the ship belongs, materially differs from what it would be under the tonnage regulations, Her Majesty may by Order in Council order that¹³ any of the ships of that country may, for all or any of the purposes of the Merchant Shipping Act 1995, be remeasured in accordance with the tonnage regulations¹⁴.

1 As to the meaning of 'ship' see PARA 229.

2 Ie as is authorised by the Merchant Shipping Act 1995 s 12: see s 12(1).

3 As to the meaning of 'tonnage regulations' see PARA 248.

4 Merchant Shipping Act 1995 s 12(1). At the date at which this volume states the law, no such Order in Council had been made.

5 As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 As to the meaning of 'United Kingdom ship' see PARA 230. As to certificates of registration under the Merchant Shipping Act 1995 see PARA 298 et seq.

7 Merchant Shipping Act 1995 s 12(2).

8 As to the meaning of 'surveyor of ships' see PARA 46 note 13.

9 As to the Secretary of State see PARA 38.

10 Merchant Shipping Act 1995 s 12(3).

11 Merchant Shipping Act 1995 s 12(4).

- 12 As to the meaning of 'foreign', in relation to a ship, see PARA 19 note 2.
- 13 le notwithstanding any Order in Council in force under the Merchant Shipping Act 1995 s 12: see s 12(5).
- 14 Merchant Shipping Act 1995 s 12(5).

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D. DISCLOSURE OF INFORMATION

251. Disclosure of information relating to registration by other government departments.

No obligation as to secrecy or other restriction on the disclosure of information, whether imposed by statute or otherwise, precludes any of the following persons¹, namely:

- 403 (1) the national authority responsible for fisheries²;
- 404 (2) the Commissioners of Revenue and Customs³; and
- 405 (3) an authorised officer of any of the persons falling within head (1) or head (2) above⁴,

from disclosing to the Secretary of State⁵, or to the registrar⁶, or to an authorised officer of the Secretary of State⁷, information for the purpose of assisting the Secretary of State in the performance of his functions relating to the registration of ships⁸.

Information so obtained by any person must not be disclosed by him to any other person except where the disclosure is made: (a) to a person to whom the information could have been duly disclosed⁹ by any of the persons mentioned in heads (1) to (3) above¹⁰; or (b) for the purposes of any legal proceedings arising out of the provisions relating to the registration of ships¹¹.

1 Merchant Shipping Act 1995 s 21(1).

2 Merchant Shipping Act 1995 s 21(1), (2)(a). The text refers to the Minister of Agriculture, Fisheries and Food: see s 21(2)(a). However, powers and functions in respect of fisheries are now exercised in England by the Secretary of State (primarily the Secretary of State for Environment, Food and Rural Affairs) or, in Wales, by the Welsh Ministers (although certain functions are exercised jointly by the Secretary of State and the Welsh Ministers): see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 846. As to the meanings of 'England' and 'Wales' see PARA 17 note 2. As to the Welsh Ministers see PARA 38. Provision is made also in relation to responsibilities for sea fishing in Scotland and Northern Ireland: see s 21(1), (2)(b), (c).

3 Merchant Shipping Act 1995 s 21(1), (2)(d) (s 21(2)(d) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 900-933.

4 Merchant Shipping Act 1995 s 21(1), (2)(e). The text refers to an authorised officer of any of the persons falling within s 21(2)(a)-(d) (as to s 21(2)(b), (c) see note 2): see s 21(2)(e).

5 Merchant Shipping Act 1995 s 21(1)(a).

6 Merchant Shipping Act 1995 s 21(1)(b). As to the meaning of 'registrar' see PARA 254 note 11.

7 Merchant Shipping Act 1995 s 21(1)(c).

8 Merchant Shipping Act 1995 s 21(1). The text refers to the Secretary of State's functions under Pt II (ss 8-23) (see PARAS 245 et seq, 252 et seq): see s 21(1).

9 In accordance with the Merchant Shipping Act 1995 s 21(1) (see the text and notes 1-8): see s 21(3)(a).

10 Merchant Shipping Act 1995 s 21(3)(a).

11 Merchant Shipping Act 1995 s 21(3)(b). The text refers to any legal proceedings arising out of Pt II (see PARAS 245 et seq, 252 et seq): see s 21(3)(b). As to offences and legal proceedings arising out of the Merchant Shipping Act 1995 generally see PARA 1100 et seq.

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E. PRIVATE LAW PROVISIONS

252. Private law provisions for registered ships and liability as owner.

The statutory provisions which make provision relating to the title to, and the registration of mortgages over, ships¹ have effect², but they do not apply in relation to ships which are excluded from their application by registration regulations³.

Where any person is beneficially interested, otherwise than as mortgagee, in any ship or share in a ship registered⁴ in the name of some other person as owner, the person so interested is liable, as well as the registered owner, to any pecuniary penalties imposed by or under the Merchant Shipping Act 1995 or any other Act on the owners of registered ships⁵.

Where the registration of any ship terminates by virtue of any provision of the registration regulations, the termination of that registration does not affect any entry made in the register⁶ so far as relating to any undischarged registered mortgage⁷ of that ship or of any share in it⁸.

1 In the Merchant Shipping Act 1995 s 16(1), Sch 1 (as to which see PARAS 237, 306, 318, 321, 323, 324, 328, 333, 335): see s 16(1). As to the meaning of 'ship' see PARA 229.

2 Merchant Shipping Act 1995 s 16(1).

3 Merchant Shipping Act 1995 s 16(2). The text refers to ships excluded from the application of Sch 1 by virtue of registration regulations under s 10(4)(a) (see PARA 247): see s 16(2). The provisions of Sch 1 do not apply to small ships (see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 91; and PARA 347) or to ships bareboat chartered-in by British charterers (see the Merchant Shipping Act 1995 s 17(7); and PARA 357). As to the meaning of 'registration regulations' see PARA 247.

4 As to the meaning of 'registered' for these purposes see PARA 254 note 2.

5 Merchant Shipping Act 1995 s 16(3).

6 As to the meaning of 'register' for these purposes see PARA 254 note 2.

7 For these purposes, 'registered mortgage' has the same meaning as in the Merchant Shipping Act 1995 Sch 1 (see PARA 318 note 5): s 16(5).

8 Merchant Shipping Act 1995 s 16(4).

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F. PROCEEDINGS ON FORFEITURE

253. Proceedings on forfeiture of ships.

The provisions under the Merchant Shipping Act 1995 which relate to proceedings on forfeiture of a ship under the provisions relating to British ships¹ apply in relation to ships or shares in ships which become liable to forfeiture under the provisions relating to registration² as they apply in relation to ships or shares in ships which become liable to forfeiture under the provisions relating to British ships³.

1 le the Merchant Shipping Act 1995 s 7 (see PARA 235) (which applies to ships liable to forfeiture under Pt I (ss 1-7) (see PARA 230 et seq)): see s 20. As to the meaning of 'ship' see PARA 229; and as to the meaning of 'British ship' see PARA 230.

2 le under the Merchant Shipping Act 1995 Pt II (ss 8-23) (see PARA 245 et seq): see s 20.

3 Merchant Shipping Act 1995 s 20. The text refers to ships which become liable to forfeiture under Pt I (see PARA 230 et seq): see s 20.

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(ii) The Register of British Ships in the United Kingdom

254. Central register of British ships.

There continues to be a register of British ships¹ for all registrations of ships in the United Kingdom². The register must:

- 406 (1) be so constituted as to distinguish, in a separate part, registrations of fishing vessels³ and may be otherwise divided into parts so as to distinguish between classes or descriptions of ships⁴;
- 407 (2) be maintained in accordance with registration regulations⁵ and the private law provisions for registered ships⁶ and any directions of a general nature given to the registrar⁷ by the Secretary of State⁸; and
- 408 (3) be available for public inspection⁹.

The register must be maintained by the Registrar General of Shipping and Seamen¹⁰ as registrar¹¹, although the Secretary of State may designate any person to discharge, on behalf of the registrar, all his functions or such of them as the Secretary of State may direct¹². The Secretary of State also may give to the registrar directions of a general nature as to the discharge of any of his functions¹³.

1 As to the meaning of 'British ship' see PARA 230; and as to the meaning of 'ship' see PARA 229.

2 Merchant Shipping Act 1995 s 8(1). For the purposes of Pt II (ss 8-23), 'register' means the register of British ships maintained for the United Kingdom under s 8; and 'registered', except with reference to the law of another country, is to be construed accordingly: s 23(1). As to the meaning of 'United Kingdom' see PARA 17 note 3.

The central register was established under the Merchant Shipping (Registration, etc) Act 1993 s 1(1) (repealed) and replaced the three then existing registers maintained under the Merchant Shipping Act 1894 Pt I (ss 1-91) (repealed), the Merchant Shipping Act 1983 s 5 (repealed) and the Merchant Shipping Act 1988 s 13 (repealed): see the Merchant Shipping (Registration, etc) Act 1993 s 1(7) (repealed). Those three registers closed on 21 March 1994 and all registrations in those registers in force on that day became registrations in the new register: see s 1(7) (repealed); the Merchant Shipping (Registration, etc) Act 1993 (Commencement No 1 and Transitional Provisions) Order 1993, SI 1993/3137, art 3(1).

The Secretary of State may by order make such amendments of any local Act or instrument so far as it provides for the registration of ships in local registers as appear to him to be appropriate in view of the provisions made for the register mentioned in the Merchant Shipping Act 1995 s 8: s 314(4). At the date at which this volume states the law, no such order had been made and none has effect as if so made. As to the Secretary of State see PARA 38; and as to his power to make subordinate legislation under the Merchant Shipping Act 1995 see PARA 41.

3 As to the meaning of 'fishing vessel' see PARA 230 note 9.

4 Merchant Shipping Act 1995 s 8(5).

5 As to the meaning of 'registration regulations' see PARA 247.

6 As to the meaning of 'the private law provisions for registered ships' see PARA 237 note 3.

7 le under the Merchant Shipping Act 1995 s 8(4) (see the text and note 13): see s 8(6). As to the registrar see note 11.

8 Merchant Shipping Act 1995 s 8(6).

9 Merchant Shipping Act 1995 s 8(7). As to inspection of copies of documents which are open to public inspection see PARA 1111.

10 As to the Registrar General of Shipping and Seamen see PARA 61.

11 Merchant Shipping Act 1995 s 8(2). For the purposes of Pt II, 'registrar' means the Registrar General of Shipping and Seamen in his capacity as registrar or, as respects functions of his being discharged by another authority or person, that authority or person: s 23(1).

12 Merchant Shipping Act 1995 s 8(3).

13 Merchant Shipping Act 1995 s 8(4). As to the Secretary of State's power to give directions see PARA 41.

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255. The register.

The register¹ maintained by the registrar² is divided into the following parts³:

- 409 (1) Part I for ships⁴, owned by qualified persons⁵, which are not fishing vessels or registered on that Part which is restricted to small ships⁶;
- 410 (2) Part II for fishing vessels⁷;
- 411 (3) Part III for small ships⁸; and
- 412 (4) Part IV for ships which are bareboat charter ships⁹.

No ship, including a small ship, may be registered on more than one Part of the register at any one time¹⁰.

Entries in the register must be made in accordance with the following provisions:

- 413 (a) the property in a ship must be divided into 64 shares¹¹;
- 414 (b) subject to the statutory provisions¹² with respect to joint owners or owners by transmission, not more than 64 persons are entitled to be registered at the same time as owners¹³ of any one ship, but this does not affect the beneficial title of any persons represented by or claiming under or through any registered owner or joint owner¹⁴;
- 415 (c) a person is not entitled to be registered as owner of a part of a share, but any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares in a ship¹⁵;
- 416 (d) joint owners are to be considered as constituting one person only as regards the persons entitled to be registered, and are not entitled to dispose in severalty of any interest in a ship, or in any share in a ship in respect of which they are registered¹⁶.

The registrar is entitled to amend the register where a clerical error has occurred, or sufficient evidence is produced to satisfy him that the entry is incorrect, and, on making the amendment, he must issue a new certificate of registry¹⁷, if necessary¹⁸.

The register may consist of both paper and computerised records and such other records as the Secretary of State may consider to be expedient¹⁹.

Any person is entitled: (i) on application to the registrar, to obtain a transcript, certified by an authorised officer, of the entries in the register²⁰; and (ii) during the official opening hours of the General Registry of Shipping and Seamen, on request to inspect the entries in the register²¹.

1 For these purposes, 'register' means the register of British ships established under the Merchant Shipping Act 1995 s 8 (see PARA 254): Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2); Interpretation Act 1978 s 17(2)(b).

2 In accordance with the Merchant Shipping Act 1995 s 8(1), (2) (see PARA 254): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1); Interpretation Act 1978 s 17(2)(b). For these purposes, 'registrar' means the person described as 'registrar' in the Merchant Shipping Act 1995 s 23(1) (see PARA 254 note 11): Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2); Interpretation Act 1978 s 17(2)(b).

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1). The registrar may, in certain circumstances, transfer the registration of a ship from one Part of the register to a different Part: see reg 72A; and PARA 343.

4 For these purposes, unless the context otherwise requires, 'ship' includes a fishing vessel (see head (2) in the text) but does not include a small ship (see head (3) in the text) or a bareboat charter ship (see head (4) in the text) except for the purposes of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Pt XII (regs 101-113A) (miscellaneous provisions) (see PARAS 317, 368 et seq) and Pt XIII (reg 114) (offences) (see PARAS 1118-1122): reg 1(2).

5 In accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 2(1)(a). As to persons qualified to be owners of ships to be registered on Part I of the register see PARA 258.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(a). For these purposes, 'small ship' means a ship which is less than 24 metres in overall length and is (or is applying to be) registered under Pt XI (regs 88-100) (registration of small ships) (see PARA 344 et seq): reg 1(2). 'Overall length' has the same meaning as 'length overall' in the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510 (see PARA 248): Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2) (definition substituted by SI 1998/1915).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(b). For these purposes, 'fishing vessel' means a vessel within the meaning of the Merchant Shipping Act 1995 s 313(1) (see PARA 230 note 9): Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2); Interpretation Act 1978 s 17(2)(b). As to the status of any Part II certificate under sea fisheries legislation see PARA 377.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(c).

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(d). For these purposes, 'bareboat charter ship' means a ship registered under the Merchant Shipping Act 1995 s 17 (see PARA 357): Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2); Interpretation Act 1978 s 17(2)(b).

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 5.

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(5)(a).

12 In the provisions of the Merchant Shipping Act 1995 and of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 2(5)(b).

13 For these purposes, 'owner' means, in relation to a ship or share in a ship, the person owning the ship or, as the case may be, a share in the ship, whether or not registered as owner: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2). However, in the Merchant Shipping Act 1995, except for s 9 (see PARA 245), and in any other enactment applicable to British ships or ships registered under that Act, any reference, however phrased, to the owner of a British ship, a United Kingdom ship or a ship registered in the United Kingdom (as to which see PARA 230), means, in relation to a bareboat charter ship, the person registered as the charterer: see the Merchant Shipping (Modification of Enactments) (Bareboat Charter Ships) Order 1994, SI 1994/774, arts 2, 3.

14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(5)(b).

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(5)(c).

16 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(5)(d).

17 For these purposes, 'certificate of registry' means a certificate of registration which is issued to a ship which is registered under the Merchant Shipping Act 1995 and includes a certificate of bareboat charter, unless the context otherwise requires: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2); Interpretation Act 1978 s 17(2)(b). 'Certificate of bareboat charter' means a certificate of registration issued to a ship which is registered under the Merchant Shipping Act 1995 s 17 (see PARA 357): Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2); Interpretation Act 1978 s 17(2)(b). As to offences in connection with certificates of registry see PARA 1121 et seq.

18 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(6).

19 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(2). As to the Secretary of State see PARA 38.

20 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(3).

- 21 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(4).

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256. Simple and full registration of fishing vessels, and changing from full to simple mode.

Registration on Part II of the register¹ is of two kinds²: (1) registration of vessels to which the statutory provisions relating to transfers by bill of sale and the registration of mortgages³ do not apply ('simple registration')⁴; and (2) registration of vessels to which those provisions do apply ('full registration')⁵.

A fishing vessel which has once been registered with full registration may not thereafter be registered with simple registration unless⁶: (a) it is not subject to a registered mortgage⁷; and (b) the vessel has in the meantime been registered outside the United Kingdom⁸; and (c) the registrar⁹ consents¹⁰.

1 ie Part II for fishing vessels: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(b); and PARA 255. As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7; and as to the meaning of 'register' for these purposes see PARA 255 note 1. As to the status of any Part II certificate under sea fisheries legislation see PARA 377.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 3.

3 ie the Merchant Shipping Act 1995 s 16(1), Sch 1 (see PARAS 237, 306, 318, 321, 323-324, 328, 333, 335): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 3; Interpretation Act 1978 s 17(2)(b).

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 3(a); Interpretation Act 1978 s 17(2)(b).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 3(b); Interpretation Act 1978 s 17(2)(b).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 4.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 4(a).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 4(b). As to the meaning of 'United Kingdom' see PARA 17 note 3.

9 As to the meaning of 'registrar' for these purposes see PARA 255 note 2.

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 4(c).

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257. Trusts not to be entered.

No trust, express, implied or constructive may be registered by the registrar¹; but, where on the bankruptcy of a registered owner² or mortgagee his title is transmitted to his trustee in bankruptcy, that person, if a qualified person³, may be registered as the owner or mortgagee of a British ship⁴ or share in a ship⁵.

1 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 6(1). As to the meaning of 'registrar' for these purposes see PARA 255 note 2.

2 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

3 As to persons qualified to be owners of ships to be registered on Part I of the register see PARA 258.

4 As to the meaning of 'ship' for these purposes see PARA 255 note 4. As to the meaning of 'British ship' under the Merchant Shipping Act 1995 see PARA 230.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 6(2).

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(iii) Qualification and Entitlement for Registration on Part I of the Register

258. Persons qualified to be owners of ships to be registered on Part I of the register.

The following persons are qualified to be the owners¹ of ships² which are registered on Part I of the register³:

- 417 (1) British citizens⁴ or non-United Kingdom⁵ nationals exercising their right of freedom of movement of workers or right of establishment⁶;
- 418 (2) British overseas territories citizens⁷;
- 419 (3) British Overseas citizens⁸;
- 420 (4) persons who under the British Nationality Act 1981 are British subjects⁹;
- 421 (5) persons who are British Nationals (Overseas)¹⁰;
- 422 (6) bodies corporate incorporated in an EEA State¹¹;
- 423 (7) bodies corporate incorporated in any relevant British possession¹² and having their principal place of business in the United Kingdom or in any such possession¹³; and
- 424 (8) European Economic Interest Groupings duly formed¹⁴ and registered in the United Kingdom¹⁵.

A person who is not so qualified to be the owner of a ship registered on Part I of the register may nevertheless be one of the owners of such a ship if¹⁶: (a) a majority interest in the ship¹⁷ is owned by persons who are so qualified¹⁸; and (b) the ship is registered on Part I of the register¹⁹.

1 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1). As to the meaning of 'register' for these purposes see PARA 255 note 1. Part I of the register, as mentioned in the text, is for ships, owned by qualified persons, which are not fishing vessels or registered on that Part which is restricted to small ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(a); and PARA 255. As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(a)(i) (reg 7(1)(a) substituted by SI 1998/2976). As to the meaning of 'British citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq.

5 As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(a)(ii) (as substituted: see note 4). For these purposes, 'non-United Kingdom nationals exercising their right of freedom of movement of workers or right of establishment' means persons who are either: (1) nationals of a member state other than the United Kingdom exercising in the United Kingdom their rights under the Treaty establishing the European Economic Community, Rome, 25 March 1957) (the 'EC Treaty') Title III (Free movement of persons, services and capital) Ch 1 art 39 (formerly art 48; renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1): see *Treaty Citation (No 2) (Note)*[1999] All ER (EC) 646, ECJ) or EC Treaty Title III Ch 2 (right of establishment)

art 43 (formerly art 52 (as so renumbered)), as the case may be; or (2) nationals of a state, other than a member state, which a Contracting Party to the EEA Agreement exercising in the United Kingdom their rights under the EEA Agreement art 28 or art 31: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2) (definition added by SI 1998/2976). 'EEA Agreement' means the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2) (definition added by SI 1998/2976). As to United Kingdom membership of the European Community see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 23 et seq.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(b) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). As to the meaning of 'British overseas territories citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 44-57.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(c). As to the meaning of 'British Overseas citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 58 et seq.

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(d). As to British subjects under the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 9, 66-67.

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(e); Interpretation Act 1978 s 17(2)(b). As to British Nationals (Overseas) within the meaning of the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 63-65.

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(f) (amended by SI 1998/2976). For these purposes, 'EEA State' means a state which is a Contracting Party to the EEA Agreement (as to which see note 6): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2) (definition added by SI 1998/2976).

12 As to the meaning of 'relevant British possession' under the Merchant Shipping Act 1995 see PARA 17 note 3.

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(g). As to a person's place of business see **COMPANIES** vol 14 (2009) PARA 122.

14 I.e. being groups formed in pursuance of EC Council Regulation 2137/85 (OJ L199, 31.7.1985, p 1) art 1: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(h). EC Council Regulation 2137/85 is implemented in the United Kingdom by the European Economic Interest Grouping Regulations 1989, SI 1989/638 (as to which see **COMPANIES** vol 15 (2009) PARAS 1631-1632).

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(h).

16 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(2) (amended by SI 1994/541).

17 I.e. within the meaning of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8 (British connection and majority interest) (see PARA 259): see reg 7(2)(a) (amended by SI 1994/541).

18 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(2)(a) (as amended: see note 17).

19 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(2)(b).

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259. British connection and majority interest in the ship.

A ship¹ is entitled to be registered on Part I of the register² if a majority interest in the ship is owned by one or more persons³ qualified⁴ to be so registered⁵.

Where a majority interest in a ship is owned by persons qualified⁶ by reason of being:

- 425 (1) British citizens⁷ or non-United Kingdom⁸ nationals exercising their right of freedom of movement of workers or right of establishment⁹;
- 426 (2) British overseas territories citizens¹⁰;
- 427 (3) persons who are British Nationals (Overseas)¹¹;
- 428 (4) bodies corporate incorporated in an EEA State¹²;
- 429 (5) European Economic Interest Groupings duly formed¹³ and registered in the United Kingdom¹⁴,

the ship may be registered only if that person or, as the case may be, any of those persons is resident in the United Kingdom¹⁵. Where this condition¹⁶ is not satisfied, the ship may be registered only if a representative person is appointed in relation to the ship¹⁷.

Where the majority interest is owned by persons one or more of whom are persons who are qualified¹⁸ by reason of being:

- 430 (a) British Overseas citizens¹⁹ or persons who under the British Nationality Act 1981 are British subjects²⁰, the ship may be registered only if that person or, as the case may be, any of those persons is resident in the United Kingdom or, where that condition is not satisfied, if the Secretary of State²¹ furnishes a declaration that he consents to the ship being registered, and, in addition, a representative person is appointed in relation to the ship²²;
- 431 (b) bodies corporate incorporated in any relevant British possession²³ and having their principal place of business in the United Kingdom or in any such possession, the ship may be registered only if the body corporate has a place of business in the United Kingdom or, where that condition is not satisfied, if a representative person is appointed in relation to the ship²⁴.

Where the majority interest is owned by the following persons²⁵:

- 432 (i) one or more persons who are qualified by reason of being British citizens or non-United Kingdom nationals exercising their right of freedom of movement of workers or right of establishment²⁶, or being British overseas territories citizens²⁷, or being persons who are British Nationals (Overseas)²⁸, or being bodies corporate incorporated in an EEA State²⁹, or being European Economic Interest Groupings duly formed and registered in the United Kingdom³⁰;
- 433 (ii) one or more persons qualified by reason of being British Overseas citizens³¹ or persons who under the British Nationality Act 1981 are British subjects³²; or
- 434 (iii) one or more persons qualified by reason of being bodies corporate incorporated in any relevant British possession and having their principal place of business in the United Kingdom or in any such possession³³,

the ship must only be registered³⁴ if any of those persons is resident in the United Kingdom³⁵ or, where that condition is not satisfied, if a representative person is appointed in relation to the ship³⁶.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part I of the register, as mentioned in the text, is for ships, owned by qualified persons, which are not fishing vessels or registered on that Part which is restricted to small ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(a); and PARA 255. As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

3 For these purposes, one or more persons is or are to be treated as owning a majority interest in a ship if there is vested in that person or in those persons, taken together, the legal title to 33 or more shares in the ship, there being left out of account for this purpose any share in which any beneficial interest is owned by a person who is not entitled to be an owner of a British ship: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 9(a). As to the meaning of 'owner' for these purposes see PARA 255 note 13. As to the meaning of 'British ship' under the Merchant Shipping Act 1995 see PARA 230.

4 *le* under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1) (see PARA 258): see reg 8(1) (amended by SI 1994/541).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8(1) (as amended: see note 4). The Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8(1) is subject to reg 36(4) (refusal of registration) (see PARA 289) and reg 8(2)-(5) (see the text and notes 6-36): reg 8(1) (as so amended).

6 *le* qualified by reason of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(a), (b), (e), (f) or (h) (as to which see heads (1) to (5) in the text; and PARA 258): see reg 8(2) (amended by SI 1994/541).

7 As to the meaning of 'British citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq.

8 As to the meaning of 'United Kingdom' see PARA 17 note 3.

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(a) (substituted by SI 1998/2976), Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8(2) (as amended: see note 6). As to the meaning of 'non-United Kingdom nationals exercising their right of freedom of movement of workers or right of establishment' see PARA 258 note 6.

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(b) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)), Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8(2) (as amended: see note 6). As to the meaning of 'British overseas territories citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 44-57.

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(e); Interpretation Act 1978 s 17(2)(b), Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8(2) (as amended: see note 6). As to British Nationals (Overseas) within the meaning of the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 63-65.

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(f) (amended by SI 1998/2976), Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8(2) (as amended: see note 6). As to the meaning of 'EEA State' for these purposes see PARA 258 note 11.

13 *le* being groups formed in pursuance of EC Council Regulation 2137/85 (OJ L199, 31.7.1985, p 1) art 1: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, regs 7(1)(h), 8(2) (reg 8(2) as amended: see note 6). EC Council Regulation 2137/85 is implemented in the United Kingdom by the European Economic Interest Grouping Regulations 1989, SI 1989/638 (as to which see **COMPANIES** vol 15 (2009) PARAS 1631-1632).

14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, regs 7(1)(h), 8(2) (reg 8(2) as amended: see note 6). For these purposes, a body corporate is treated as resident in the United Kingdom if, being a body incorporated in a member state, it has a place of business in the United Kingdom: reg 9(b).

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8(2) (as amended: see note 6). As to the rules of domicile and residence generally see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 35 et seq.

16 *le* the condition in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8(2) (see the text and notes 6-15): see reg 8(3).

17 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, regs 7(1)(h), 8(3). The text refers to the appointment of representative persons in relation to the ship under Pt V (regs 18, 19) (see PARAS 267-268): see reg 8(3).

18 *le* qualified by reason of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(c) or reg 7(1)(d) or, as the case may be, reg 7(1)(g) (as to which see heads (a) and (b) in the text; and PARA 258): see reg 8(4) (amended by SI 1994/541).

19 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, regs 7(1)(c), 8(4)(a). As to the meaning of 'British Overseas citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 58 et seq.

20 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, regs 7(1)(d), 8(4)(a). As to British subjects under the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 9, 66-67.

21 As to the Secretary of State see PARA 38.

22 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8(4)(a).

23 As to the meaning of 'relevant British possession' under the Merchant Shipping Act 1995 see PARA 17 note 3.

24 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, regs 7(1)(g), 8(4)(b). As to a person's place of business see **COMPANIES** vol 14 (2009) PARA 122.

25 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8(5) (amended by SI 1994/541).

26 *le* qualified by reason of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(a) (as to which see head (1) in the text; and PARA 258): see reg 8(5)(a).

27 *le* qualified by reason of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(b) (as to which see head (2) in the text; and PARA 258): see reg 8(5)(a).

28 *le* qualified by reason of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(e) (as to which see head (3) in the text; and PARA 258): see reg 8(5)(a).

29 *le* qualified by reason of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(f) (as to which see head (4) in the text; and PARA 258): see reg 8(5)(a).

30 *le* qualified by reason of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(h) (as to which see head (5) in the text; and PARA 258): see reg 8(5)(a).

31 *le* qualified by reason of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(c) (as to which see head (a) in the text; and PARA 258): see reg 8(5)(b).

32 *le* qualified by reason of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(d) (as to which see head (a) in the text; and PARA 258): see reg 8(5)(b).

33 *le* qualified by reason of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1)(g) (as to which see head (b) in the text; and PARA 258): see reg 8(5)(c).

34 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8(5) (as amended: see note 25).

35 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8(5)(i).

36 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8(5)(ii).

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260. Government ships not required to be registered on Part I of the register.

Nothing in the provisions relating to qualification and entitlement for registration on Part I of the register¹ applies to a government ship².

1 le nothing in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Pt III (regs 7-11) (see PARAS 258-261): see reg 10. As to the meaning of 'register' for these purposes see PARA 255 note 1. Part I of the register, as mentioned in the text, is for ships, owned by qualified persons, which are not fishing vessels or registered on that Part which is restricted to small ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(a); and PARA 255. As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7; as to the meaning of 'ship' see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 10. The text refers to government ships, being ships to which the Merchant Shipping Act 1995 s 308(2), (4) (see PARA 20) applies: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 10; Interpretation Act 1978 s 17(2)(b).

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261. Fishing vessels not allowed to be registered on Part I of the register.

A fishing vessel¹ may not be registered on Part I of the register².

1 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 11. As to the meaning of 'register' for these purposes see PARA 255 note 1. Part I of the register, as mentioned in the text, is for ships, owned by qualified persons, which are not fishing vessels or registered on that Part which is restricted to small ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(a); and PARA 255. As to the meaning of 'ship' see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

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(iv) Qualification and Entitlement for Registration on Part II of the Register

262. Eligibility.

The following persons are qualified to be the owners¹ of fishing vessels² which are to be registered on Part II of the register³:

- 435 (1) British citizens⁴ or non-United Kingdom⁵ nationals exercising their right of freedom of movement of workers or right of establishment⁶;
- 436 (2) bodies corporate incorporated in an EEA State⁷ with a place of business in the United Kingdom⁸;
- 437 (3) European Economic Interest Groupings duly formed⁹ and registered in the United Kingdom¹⁰;
- 438 (4) a local authority in the United Kingdom¹¹.

A ship¹² is entitled¹³ to be registered only if the legal and beneficial title of the vessel are vested wholly in one or more of the persons qualified¹⁴ to be owners of a British fishing vessel¹⁵.

Where any share in a vessel is beneficially owned jointly by persons not all of whom are qualified¹⁶ to be the owners of a British fishing vessel, the whole of the share is treated¹⁷ as beneficially owned by persons who are not so qualified¹⁸.

1 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

2 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 12. As to the meaning of 'register' for these purposes see PARA 255 note 1. Part II of the register, as mentioned in the text, is for fishing vessels: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(b); and PARA 255. As to the status of any Part II certificate under sea fisheries legislation see PARA 377.

4 As to the meaning of 'British citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq.

5 As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 12(a) (substituted by SI 1998/2976). As to the meaning of 'non-United Kingdom nationals exercising their right of freedom of movement of workers or right of establishment' see PARA 258 note 6.

7 As to the meaning of 'EEA State' for these purposes see PARA 258 note 11.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 12(b) (amended by SI 1998/2976). As to a person's place of business see **COMPANIES** vol 14 (2009) PARA 122.

9 I.e. being groups formed in pursuance of EC Council Regulation 2137/85 (OJ L199, 31.7.1985, p 1) art 1: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 12(c). EC Council Regulation 2137/85 is implemented in the United Kingdom by the European Economic Interest Grouping Regulations 1989, SI 1989/638 (as to which see **COMPANIES** vol 15 (2009) PARAS 1631-1632).

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 12(c).

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 12(d). As to local authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

12 As to the meaning of 'ship' see PARA 255 note 4.

13 *le* subject to the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 14 (British connection and representative persons for fishing vessels) (see PARA 263), reg 15 (dispensations) (see PARA 264) and reg 36(2)-(4) (registration and refusal of registration of a ship) (see PARA 289): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 13(1).

14 *le* by virtue of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 12 (see the text and notes 1-11): see reg 13(1).

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 13(1). In the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, unless the context otherwise requires, 'beneficial ownership' is to be determined by reference to every beneficial interest in that vessel, however arising (whether held by trustee or nominee or arising under a contract or otherwise), other than an interest held by any person as mortgagee: reg 1(2).

16 *le* by virtue of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 12 (see the text and notes 1-11): see reg 13(2).

17 *le* for the purposes of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Pt IV (regs 12-17) (see also PARA 262 et seq): see reg 13(2).

18 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 13(2).

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263. British connection and representative persons for fishing vessels.

A fishing vessel¹ may not² be registered on Part II of the register³ unless⁴:

- 439 (1) it is managed, and its operations controlled and directed, from within the United Kingdom⁵; and
- 440 (2) any charterer, manager or operator of the vessel is a person qualified⁶ to be the owner⁷ of a British fishing vessel⁸.

Where:

- 441 (a) the requirements as to entitlement to be registered⁹ are satisfied with respect to a fishing vessel¹⁰; but
- 442 (b) the legal title to the vessel is vested wholly in one or more qualified persons who is or, as the case may be, each of whom is, an individual not resident in the United Kingdom¹¹,

the vessel is only eligible to be registered as a fishing vessel if a representative person is appointed in relation to the vessel¹².

1 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

2 Ie notwithstanding that the requirements specified in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 13 (see PARA 262) are satisfied: see reg 14(1).

3 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part II of the register, as mentioned in the text, is for fishing vessels: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(b); and PARA 255. As to the status of any Part II certificate under sea fisheries legislation see PARA 377.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 14(1).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 14(1)(a). As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 Ie by virtue of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 12 (see PARA 262): see reg 14(1)(b).

7 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 14(1)(b).

9 Ie the requirements specified in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 13 (see PARA 262): see reg 14(2)(a).

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 14(2)(a).

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 14(2)(b). As to the rules of domicile and residence generally see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 35 et seq.

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 14(2). The text refers to the appointment of a representative person in relation to the vessel under Pt V (regs 18, 19) (see PARAS 267-268): see reg 14(2).

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264. Dispensations.

Where, in the case of any fishing vessel¹, the Secretary of State² is satisfied that³:

- 443 (1) a fishing vessel would be eligible to be registered on Part II of the register⁴ but for the fact that any particular individual or, as the case may be, each of a number of particular individuals, is not a British citizen⁵ or a national of a member state other than the United Kingdom⁶, and is accordingly not a qualified person⁷; and
- 444 (2) it would be appropriate to dispense with the requirement of British citizenship or nationality of such a member state in the case of that individual or those individuals, in view of the length of time he has or they have resided in the United Kingdom and have been involved in the fishing industry of the United Kingdom⁸,

the Secretary of State may determine that that requirement should be so dispensed with⁹.

If he does so, the vessel is treated, so long as head (1) above applies to it and so long as any such determination remains in force, for the purposes of registration on Part II of the register as being eligible to be registered as a British fishing vessel¹⁰.

1 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

2 As to the Secretary of State see PARA 38.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 15(1).

4 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part II of the register, as mentioned in the text, is for fishing vessels: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(b); and PARA 255.

5 As to the meaning of 'British citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq.

6 'Member state' means a state which is a member of the European Communities: see the European Communities Act 1972 s 1(2), Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1. As to the meaning of 'United Kingdom' see PARA 17 note 3.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 15(1)(a).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 15(1)(b).

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 15(1).

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 15(1). As to the status of any Part II certificate under sea fisheries legislation see PARA 377.

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265. Appointment of inspectors.

For the purpose of determining whether a fishing vessel¹ is eligible to be registered on Part II of the register², the Secretary of State³ may appoint a person to investigate the eligibility of the vessel to be so registered and to make a report of his conclusions to the Secretary of State⁴. Any person so appointed has the powers, for the purpose of conducting the investigation, conferred on an inspector by the Merchant Shipping Act 1995⁵.

1 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

2 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part II of the register, as mentioned in the text, is for fishing vessels: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(b); and PARA 255.

3 As to the Secretary of State see PARA 38.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 16.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 16; Interpretation Act 1978 s 17(2)(b). The text refers to the powers conferred on an inspector by the Merchant Shipping Act 1995 s 259 (other than s 259(2)(d)-(h)) (see PARA 49): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 16; Interpretation Act 1978 s 17(2)(b).

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266. Exemptions.

The provisions of the Merchant Shipping Act 1995 which relate to the registration of fishing vessels¹ do not apply to²:

- 445 (1) salmon cobles³;
- 446 (2) vessels which are ten metres overall length and under and which are not propelled by use of an engine⁴; and
- 447 (3) vessels which are ten metres overall length and under which are used to fish for only common eels (*Anguilla anguilla*)⁵.

1 The Merchant Shipping Act 1995 s 15(1) (see PARA 1117), under which the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, have effect: see reg 17; Interpretation Act 1978 s 17(2) (b).

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 17.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 17(a). For these purposes, 'salmon coble' means a vessel under ten metres in overall length used for fishing for profit only in connection with the private rights of fishing for salmon or migratory trout: reg 1(2). As to the meaning of 'overall length' see PARA 255 note 6.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 17(b).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 17(c).

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(v) Appointment of Representative Persons

267. Appointment of representative persons.

Where the entitlement of any ship¹ to be registered is conditional upon the appointment of a representative person², the owner³ of the ship must⁴:

- 448 (1) before applying for the ship to be registered, appoint an individual or body corporate satisfying the requirements set out in heads (a) and (b) below to be the representative person⁵; and
- 449 (2) ensure that, so long as the ship remains registered, an individual or body corporate satisfying those requirements will be so appointed⁶.

A representative person is either: (a) an individual resident in the United Kingdom⁷; or (b) a body corporate incorporated in a member state⁸ and having a place of business in the United Kingdom⁹.

The appointment of the representative person must be made in a form approved by the Secretary of State¹⁰ and must contain the name and the address of the representative person¹¹.

The owner of any ship in relation to which any representative person is for the time being appointed under these provisions must:

- 450 (i) on applying for the ship to be registered, send to the registrar¹² the required appointment¹³;
- 451 (ii) in the event of any change in the identity, or in the address, of the representative person, notify the registrar of the relevant change within seven days of the change occurring¹⁴;

and the registrar must record the new particulars in the register¹⁵.

1 As to the meaning of 'ship' see PARA 255 note 4.

2 See eg the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8(3) (cited in PARA 259); and the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 14(2) (cited in PARA 263).

3 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 18(1).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 18(1)(a).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 18(1)(b).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 18(2)(a). As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the rules of domicile and residence generally see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 35 et seq.

8 'Member state' means a state which is a member of the European Communities: see the European Communities Act 1972 s 1(2), Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1.

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 18(2)(b). As to a person's place of business see **COMPANIES** vol 14 (2009) PARA 122.

10 As to the Secretary of State see PARA 38.

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 18(3).

12 As to the meaning of 'registrar' see PARA 255 note 2.

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 18(4)(a). The text refers to the appointment required by reg 18(3) (see the text and notes 10-11): see reg 18(4)(a).

14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 18(4)(b).

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 18(4). As to the meaning of 'register' for these purposes see PARA 255 note 1.

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268. Service on representative persons.

Any document required or authorised to be served by or under the Merchant Shipping Act 1995¹ or required or authorised, by virtue of any statutory provision, to be served for the purpose of the institution of, or otherwise in connection with, proceedings for an offence under the 1995 Act², or under any instrument in force under that Act, on the owner³ of a ship⁴ is treated as duly served on him if⁵:

- 452 (1) delivered to any representative person for the time being appointed⁶; or
- 453 (2) sent to any such person by post at the address notified, or, as the case may be, last notified, to the registrar⁷ in relation to that person⁸; or
- 454 (3) left for any such person at that address⁹.

1 As to the service of documents under the Merchant Shipping Act 1995 generally see s 291; and PARA 73.

2 As to offences and legal proceedings arising out of the Merchant Shipping Act 1995 generally see PARA 1100 et seq.

3 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

4 As to the meaning of 'ship' see PARA 255 note 4.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 19; Interpretation Act 1978 s 17(2)(b).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 19(a). As to the appointment of representative persons see PARA 267.

7 Ie under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 18(4) (see PARA 267): see reg 19(b). As to the meaning of 'registrar' see PARA 255 note 2.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 19(b).

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 19(c).

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(vi) Registration

A. APPLICATION FOR REGISTRATION

269. Form of application.

Every application for registration¹ must be made to the registrar² at the General Registry of Shipping and Seamen³. Applications in respect of fishing vessels⁴ may also be made through a local office⁵.

The application must be made in a form approved by the Secretary of State⁶ and must contain the name and address of the applicant and sufficient information to enable the ship to be identified⁷.

1 le made under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 20(1) (amended by SI 1998/2976). For these purposes, 'application for registration' includes, except where otherwise stated: application for registration of a ship or share in a ship; application for registration of a small ship; application for re-registration of the same; and application for the registration of a transfer or transmission of a ship or a share in a ship; but not application for renewal of registration: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2). As to the meaning of 'ship' see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

2 As to the meaning of 'registrar' see PARA 255 note 2.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 20(1) (as amended: see note 1).

4 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 20(1) (as amended: see note 1). For these purposes, 'local office' means an office listed in the list published by the Department of Transport and entitled 'List of Local Offices for Fishing Vessels Registration': see reg 1(2).

6 As to the Secretary of State see PARA 38.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 20(2). As to the requirement to supply supplementary information or evidence where that provided on an application for registration is judged to be either not correct or insufficient see PARA 372.

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270. The applicant.

Every application for registration¹ must be made²:

- 455 (1) in the case of individuals, by some one or more of the individuals registered or requiring to be registered as owners³ or by his or their agent⁴; or
- 456 (2) in the case of a body corporate, by a duly authorised officer of that body corporate, or by its agent⁵; or
- 457 (3) in the case of a European Economic Interest Group⁶, by a duly authorised officer of that group, or by its agent⁷.

1 le made under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 21. As to the meaning of 'application for registration' see PARA 269 note 1.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 21(1).

3 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 21(1)(a).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 21(1)(b).

6 As to European Economic Interest Groups see **COMPANIES** vol 15 (2009) PARAS 1631-1632.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 21(1)(c).

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271. Appointment of managing owner where ship has more than one owner.

Where application for registration¹ is made in respect of a ship² which has more than one owner³ (or whose shares are owned by more than one owner) and no representative person has been appointed⁴, one of those owners who is resident in the United Kingdom⁵ must be nominated as the managing owner; and the register⁶ must be marked accordingly and all correspondence must be sent to that person at the address recorded in the register in respect of that owner⁷.

Where the owners determine that a different managing owner should be appointed, the registrar⁸ must be notified in writing and the register noted accordingly⁹.

Any document required or authorised to be served, by or under the Merchant Shipping Act 1995¹⁰ or required or authorised, by virtue of any statutory provision, to be served for the purpose of the institution of, or otherwise in connection with, proceedings for an offence under the 1995 Act¹¹, or under any instrument in force under that Act, on the owner of a ship is to be treated as duly served on him if¹²: (1) delivered to the managing owner¹³; or (2) sent to the managing owner by post at the address notified (or, as the case may be, last notified) to the registrar¹⁴ in relation to that person¹⁵; or (3) left for the managing owner at that address¹⁶.

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

4 Ie under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Pt V (regs 18, 19) (see PARAS 267-268): see reg 23(1).

5 As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the rules of domicile and residence generally see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 35 et seq.

6 As to the meaning of 'register' for these purposes see PARA 255 note 1.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 23(1).

8 As to the meaning of 'registrar' see PARA 255 note 2.

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 23(2).

10 As to the service of documents under the Merchant Shipping Act 1995 generally see s 291; and PARA 73.

11 As to offences and legal proceedings arising out of the Merchant Shipping Act 1995 generally see PARA 1100 et seq.

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 23(3).

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 23(3)(a).

14 Ie under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 23(1) or reg 23(2) (see the text and notes 1-9): see reg 23(3)(b).

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 23(3)(b).

- 16 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 23(3)(c).

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272. Supplementary requirements for application for registration.

Every application for registration¹ must be supported by a declaration of eligibility² which must be in a form approved by the Secretary of State³ and must include⁴:

- 458 (1) a declaration of British connection⁵;
- 459 (2) a declaration of ownership by every owner⁶ setting out his qualification to own a British ship⁷;
- 460 (3) a statement of the number of shares in the ship the legal title of which is vested in each owner whether alone or jointly with any other person or persons⁸; and
- 461 (4) in respect of an application to register a fishing vessel⁹, a statement of the beneficial ownership¹⁰ of any share which is not beneficially owned by its legal owner¹¹.

Every application for registration of a ship which has, immediately prior to the application, been registered on any other register¹² must be accompanied by a certified extract from that register in respect of that ship¹³.

Every application for registration of a fishing vessel on Part II of the register¹⁴ must state whether the application is for full¹⁵ or simple¹⁶ registration¹⁷.

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 For these purposes, 'declaration of eligibility' means a declaration which complies with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 22(1): reg 1(2). As to the power to dispense with declarations or other evidence otherwise required under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, see PARA 371.

3 As to the Secretary of State see PARA 38.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 22(1) (amended by SI 1994/541). The Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 22(1) is subject to reg 25 (declaration of intent) (see PARA 274): reg 22(1) (as so amended). As to offences in connection with applications see PARA 1121. As to the requirement to supply supplementary information or evidence where that provided on an application for registration is judged to be either not correct or insufficient see PARA 372.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 22(1)(a). As to the meaning of 'declaration of British connection' under the Merchant Shipping Act 1995 see PARA 245 note 3.

6 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 22(1)(b). As to the meaning of 'ship' for these purposes see PARA 255 note 4. As to the meaning of 'British ship' under the Merchant Shipping Act 1995 see PARA 230.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 22(1)(c).

9 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

10 As to the meaning of 'beneficial ownership' for these purposes see PARA 262 note 15.

- 11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 22(1)(d).
- 12 Is a register other than the central register of British ships (as to the meaning of which see PARA 255 note 1).
- 13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 22(2).
- 14 Part II of the register is for fishing vessels only: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(b); and PARA 255. As to the status of any Part II certificate under sea fisheries legislation see PARA 377.
- 15 As to the meaning of 'full registration' see PARA 256.
- 16 As to the meaning of 'simple registration' see PARA 256.
- 17 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 22(3).

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273. Supplementary requirements for applications by bodies corporate.

Where application for registration¹ is made on behalf of a body corporate, the application must be accompanied by²:

- 462 (1) if it is a company registered in the United Kingdom³, a copy of its certificate of incorporation, and, in the case of a company which has changed its name since incorporation, its certificates of change of name⁴; or
- 463 (2) if it is a company incorporated in a member state⁵ other than the United Kingdom or a company incorporated in any relevant British possession⁶, proof in accordance with the laws of the country of its incorporation that the company is an incorporated company⁷;
- 464 (3) if it is a company, other than a company incorporated in the United Kingdom, with a place of business in the United Kingdom, a certificate from the registrar of companies in England and Wales⁸, the registrar of Scottish companies⁹ or the registrar of Northern Ireland companies¹⁰ that the company is registered with him as an overseas company¹¹; and
- 465 (4) if it is a body corporate incorporated by virtue of an Act of Parliament, a Charter granted by Her Majesty, or an Act of Ordinance of a relevant British possession, proof, sufficient to satisfy the registrar¹², of its incorporation¹³.

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 24. As to the requirement to supply supplementary information or evidence where that provided on an application for registration is judged to be either not correct or insufficient see PARA 372.

3 As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 24(a). As to companies and their incorporation etc see **COMPANIES** vol 14 (2009) PARA 119 et seq.

5 'Member state' means a state which is a member of the European Communities: see the European Communities Act 1972 s 1(2), Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1.

6 As to the meaning of 'relevant British possession' under the Merchant Shipping Act 1995 see PARA 17 note 3.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 24(b).

8 As to the registrar of companies see **COMPANIES** vol 14 (2009) PARA 131 et seq. As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

9 As to companies in Scotland see **COMPANIES** vol 14 (2009) PARA 29.

10 As to companies in Northern Ireland see **COMPANIES** vol 14 (2009) PARA 29.

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 24(c). As to overseas companies see **COMPANIES** vol 15 (2009) PARA 1824 et seq. As to a person's place of business see **COMPANIES** vol 14 (2009) PARA 122.

12 As to the meaning of 'registrar' see PARA 255 note 2.

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 24(d) (amended by SI 1994/541).

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274. Declaration of intent.

Where, at the time when the application for registration¹ is made, the ownership of a ship² has not yet passed (or fully passed) to the persons who are to be its owners³ when it is registered, the application must be accompanied by a declaration of intent instead of a declaration of eligibility⁴. The declaration of intent must consist of: (1) a draft declaration of eligibility setting out particulars of ownership of the ship as they are intended to be when the ship is registered⁵; and (2) a declaration that the ownership of the ship will, at the time when registration occurs, be as stated in the draft declaration of eligibility⁶.

Where an application for registration is accompanied by a declaration of intent and not by a declaration of eligibility, a duly completed declaration of eligibility must be submitted to the registrar⁷ prior to registration⁸.

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 25. As to the meaning of 'declaration of eligibility' see PARA 272 note 2. As to the power to dispense with declarations or other evidence otherwise required under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, see PARA 371.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 26(a).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 26(b).

7 As to the meaning of 'registrar' see PARA 255 note 2.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 27.

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275. Evidence required to support registration.

An application to register a ship¹ (other than an application in respect of a fishing vessel² requiring simple registration³) must be supported by the following evidence of title⁴:

- 466 (1) in the case of a new ship, the builder's certificate⁵;
- 467 (2) in the case of a ship which is not new: (a) in respect of a pleasure vessel⁶, a previous bill or bills of sale showing the ownership of the ship for at least five years before the application is made or, if the ship has been registered with a full registration at any time within the last five years, a bill or bills of sale evidencing all transfers of ownership during the period since it was so registered⁷; (b) in respect of a fishing vessel, a previous bill or bills of sale showing the ownership of the vessel for at least three years before the application is made, or, if the ship has been registered with full registration⁸ at any time within the last three years, a bill or bills of sale evidencing all transfers of ownership during the period since it was so registered, or evidence that the vessel has been for at least three years continuously registered as a British fishing vessel with simple registration in the names of the owners⁹ applying to be registered and remains so registered¹⁰; or (c) in respect of a ship other than a pleasure vessel or a fishing vessel, one bill of sale showing the most recent transfer of ownership¹¹;
- 468 (3) where the evidence required by head (1) or head (2) above is not available, other evidence of title satisfactory to the registrar¹².

Where such an application is made to register a fishing vessel (whether new or second hand)¹³, the applicant must submit details of the maximum continuous engine power¹⁴ and, where an engine is permanently de-rated, the modification explanation¹⁵. Any owner who contravenes this requirement is guilty of an offence¹⁶.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4. As to the meaning of 'application for registration' see PARA 269 note 1.

2 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

3 As to the meaning of 'simple registration' see PARA 256.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 28(1) (amended by SI 1998/2976; renumbered by SI 1999/3206).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 28(1)(a) (reg 28(1) as renumbered: see note 4). For these purposes, 'builder's certificate' means a certificate signed by the builder of the ship and containing a true account of the proper denomination and of the tonnage of the ship, as estimated by him, and of the date and place where the ship was built, and of the name of the person, if any, for whom the ship was built, or the name of the person to whom it was delivered: reg 1(2).

6 For these purposes, 'pleasure vessel' means a pleasure vessel as defined in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 2 (see PARA 609): Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2) (definition substituted by SI 1999/3206).

- 7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 28(1)(b)(i) (reg 28(1) as renumbered (see note 4); reg 28(1)(b)(i) amended by SI 1999/3206).
- 8 As to the meaning of 'full registration' see PARA 256.
- 9 As to the meaning of 'owner' for these purposes see PARA 255 note 13.
- 10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 28(1)(b)(ii) (reg 28(1) as renumbered (see note 4); reg 28(1)(b)(ii) amended by SI 1999/3206).
- 11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 28(1)(b)(iii) (reg 28(1) as renumbered (see note 4); reg 28(1)(b)(iii) added by SI 1999/3206). Where a ship has entered the register by virtue of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 28(1)(b)(iii) and subsequently becomes a pleasure vessel or a fishing vessel, the owner must then provide the title evidence required under reg 28(1)(b)(i) (see head (2)(a) in the text) or under reg 28(1)(b)(ii) (see head (2)(b) in the text) respectively or under reg 28(1)(c) (see head (3) in the text) for the ship to remain eligible to be registered: reg 28(2) (added by SI 1999/3206). As to the meaning of 'register' for these purposes see PARA 255 note 1.
- 12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 28(1)(c) (reg 28(1) as renumbered (see note 4); reg 28(1)(c) amended by SI 1999/3206). As to the meaning of 'registrar' see PARA 255 note 2.
- 13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(1)(a) (regs 29A, 29B added by SI 1999/3206).
- 14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(2)(a) (as added: see note 13). The text refers to details of the maximum continuous engine power, determined in accordance with EC Council Regulation 2930/86 of 22 September 1986 defining characteristics for fishing vessels (OJ L274, 25.9.1986, p 1) art 5: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(2)(a) (as so added). For these purposes, 'maximum continuous engine power' has the same meaning as 'engine power' in EC Council Regulation 2930/86 art 5.1 (defining characteristics for fishing vessels): Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2) (definition added by SI 1999/3206). Where the registrar is not satisfied that the engine power details notified to him, or recorded, for any fishing vessel are correct, he may require the owner to have the engine power measured in accordance with EC Council Regulation 2930/86 art 5: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29B (as so added).
- 15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(2)(b) (as added: see note 13). For these purposes, 'modification explanation' means the clear explanation, referred to in EC Commission Regulation 1381/87 of 20 May 1987 establishing detailed rules concerning the marking and documentation of fishing vessels (OJ L132, 21.5.1987, p 9) art 3.3, of the method by which any modification of engine power has been carried out: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2) (definition added by SI 1999/3206). 'Permanently de-rated engine power' means a modification of the maximum continuous engine power referred to in EC Commission Regulation 1381/87 art 3.3: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2) (definition added by SI 1999/3206).
- 16 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(3); and PARA 1118.

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B. SURVEY AND MEASUREMENT

276. Survey and measurement of ship.

Every ship¹, other than certain fishing vessels², must before registration be surveyed by a surveyor of ships³ and her tonnage ascertained in accordance with the tonnage regulations⁴.

Certain fishing vessels⁵ must before registration be measured by an authorised measurer⁶ and her tonnage calculated in accordance with the tonnage regulations made under the Merchant Shipping Act 1995⁷.

After survey or measurement, the surveyor or measurer must issue a certificate specifying the ship's tonnage and build and such other particulars describing the identity of the ship as may be required by the Secretary of State⁸. The certificate must be delivered to the registrar⁹ before the ship may be registered¹⁰.

A ship which is being registered for the first time which has been surveyed or measured and its tonnage ascertained within the previous 12 months, or which is being re-registered within 12 months of its registration on the register¹¹ ceasing, is not required to be surveyed or measured (or its tonnage ascertained) again¹² if a declaration is made by the owners¹³ confirming that the survey or measurement and tonnage details have not changed from those previously provided to the registrar¹⁴.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 I.e. other than a fishing vessel less than 24 metres in length to which the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510, Pt IIA (regs 12A-12E) (measurement of smaller fishing vessels) (see PARA 248) does not apply: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29(1) (amended by SI 1998/1915; SI 1999/3206). 'Length' in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29 has the same meaning as in the Tonnage Regulations: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2) (definition added by SI 1998/1915). 'Tonnage regulations' means the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510 (as to which see PARA 248): Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2) (definition added by SI 1998/1915). As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7. See the text and notes 5-7.

3 For these purposes, 'surveyor of ships' means a marine surveyor nominated by the Secretary of State to undertake the surveys required by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, and includes any marine surveyor of the Department of Transport: reg 1(2). As to the Secretary of State see PARA 38.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29(1) (as amended: see note 2). Regulation 29(1) is subject to reg 29A (as to which see PARAS 275, 313-314, 1118): reg 29(1) (as so amended).

5 I.e. a fishing vessel of less than 24 metres other than a fishing vessel to which the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510, Pt IIA (regs 12A-12E) (measurement of smaller fishing vessels) (see PARA 248) applies: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29(2) (amended by SI 1998/1915; SI 1999/3206).

6 For these purposes, 'authorised measurer' means the Secretary of State or any person authorised under the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510, or the Merchant Shipping (Fishing Vessels - Tonnage) Regulations 1988, SI 1988/1909 (see PARA 248) to carry out the measurement of ships for the

purposes of those regulations: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2); Interpretation Act 1978 s 17(2)(b).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29(2) (as amended: see note 5). As to the tonnage regulations made under the Merchant Shipping Act 1995 see PARA 248. The Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29(2) is subject to reg 29A (as to which see PARAS 275, 313, 314, 1118): reg 29(2) (as so amended).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29(3).

9 As to the meaning of 'registrar' see PARA 255 note 2.

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29(3).

11 As to the meaning of 'register' for these purposes see PARA 255 note 1.

12 In accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29(1), (2) (see the text and notes 1-7): see reg 29(4) (reg 29(4), (5) added by SI 1998/2976).

13 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29(4) (as added: see note 12). The registrar may, if he thinks it appropriate, direct that an authorised measurer or surveyor provides such a declaration: reg 29(5) (as so added). As to the power to dispense with declarations or other evidence otherwise required under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, see PARA 371.

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C. NAMES

277. Ship's proposed name.

On making an application for registration¹ of a ship², the applicant must propose a name by which the ship is to be called³.

A ship may not be described by any name other than its registered name⁴; and a change may not be made in a registered ship's name without the prior written permission of the registrar⁵.

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 30(1). As to the approval of names see reg 30(2), Sch 1; and PARA 278.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 30(3).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 30(4). As to the meaning of 'registrar' see PARA 255 note 2.

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278. Approval of names.

Every application to the registrar¹ to approve a name for a ship² must specify a name which is in Roman letters; any numerals must be in Roman or Arabic numerals³.

In respect of an application to register a ship (other than a fishing vessel⁴) on Part I or IV of the register⁵, the registrar must not approve the proposed name if it is⁶:

- 469 (1) already the name of a registered British ship⁷; or
- 470 (2) a name so similar to that of a registered British ship as to be calculated to deceive or likely to confuse⁸;
- 471 (3) a name which may be confused with a distress signal⁹;
- 472 (4) a name which is prefixed by any letters or name which could be taken to indicate a type of ship or any other word, prefix or suffix which might cause confusion as to the name of the ship¹⁰.

In respect of an application to register a fishing vessel on Part II or IV of the register, the registrar must not approve the proposed name if it is¹¹:

- 473 (a) already the name of a vessel in its port of choice¹²; or
- 474 (b) a name so similar to that of a registered British fishing vessel¹³ in its port of choice as to be calculated to deceive or likely to confuse¹⁴;
- 475 (c) a name which may be confused with a distress signal¹⁵;
- 476 (d) a name which is prefixed by any letters or name which could be taken to indicate a type of ship or any other word, prefix or suffix which might cause confusion as to the name of the ship¹⁶.

If the registrar is satisfied that a name does not fall within heads (1) to (4) above or heads (a) to (d) above, he must notify the applicant in writing that the name is approved and that the ship may be registered with that name¹⁷. However, notwithstanding that the registrar is so satisfied as to the proposed name, he may refuse to approve a name which might cause offence or embarrassment or which has a clear and direct connection with the Royal family¹⁸.

Any approval so given by the registrar is valid only for the period of three months beginning with the date it is notified to the applicant¹⁹. If the registrar is not so satisfied, he must notify the applicant accordingly²⁰.

The registrar may allow the reservation of a ship's name or designation for a period of ten years²¹ if he is satisfied that²²:

- 477 (i) the ship is intended to replace another of the same name which is to be registered within ten years of the date of the application²³; and
- 478 (ii) the applicant is the owner²⁴ of a registered ship with the same name as that which is to be reserved and its British registration will be closed before the registration of the new vessel²⁵; or
- 479 (iii) the applicant is the owner of a registered ship with the same name as that which is to be reserved and it will be sold before the registration of the new vessel on condition that it changes its name and that its name is so changed²⁶.

Applications for such a reservation must be accompanied by a full statement of the circumstances of the case²⁷.

Where a ship having once been registered has ceased to be registered, no person (unless ignorant of the previous registration, proof whereof will lie on him) may apply for registration of the ship other than by the name by which it was previously registered except with the written permission of the registrar²⁸.

- 1 As to the meaning of 'registrar' see PARA 255 note 2.
- 2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.
- 3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 30(2), Sch 1 para 1 (amended by SI 1994/541). The Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 is applied also for the purposes of reg 52 (change of name) (as to which see PARA 315), reg 72 (transfer of registration from relevant British possession) (as to which see PARA 342) and reg 78 (application for registration of a bareboat charter ship) (as to which see PARA 361).
- 4 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7. See the text and notes 11-16.
- 5 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part I of the register, as mentioned in the text, is for ships, owned by qualified persons, which are not fishing vessels or registered on that Part which is restricted to small ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(a); and PARA 255. Part IV of the register is for ships which are bareboat charter ships: see reg 2(1)(d); and PARA 255. As to the meaning of 'bareboat charter ship' see PARA 255 note 9; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.
- 6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 2.
- 7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 2(a). As to the meaning of 'British ship' under the Merchant Shipping Act 1995 see PARA 230.
- 8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 2(b).
- 9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 2(c).
- 10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 2(d).
- 11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 3.
- 12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 3(a). For these purposes, 'port of choice' means a port listed in reg 31(1), Sch 2 (as to which see PARA 279) which an applicant chooses as a port to be marked on his ship: reg 1(2) (definition amended by SI 1999/3206).
- 13 As to the meaning of 'British fishing vessel' under the Merchant Shipping Act 1995 see PARA 230.
- 14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 3(b).
- 15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 3(c).
- 16 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 3(d).
- 17 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 4.
- 18 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 5.
- 19 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 6.
- 20 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 7.
- 21 Ie notwithstanding the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 6 (see the text and note 19): see Sch 1 para 8.
- 22 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 8.

- 23 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 8(a).
- 24 As to the meaning of 'owner' for these purposes see PARA 255 note 13.
- 25 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 8(b).
- 26 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 8(c).
- 27 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 9.
- 28 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 1 para 10.

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D. OFFICIAL NUMBER AND PORT OF CHOICE

279. Allocation of official number and port of choice.

On making an application for registration¹ of a ship², the applicant must specify one of the listed ports³ which it is intended shall be the ship's port of choice⁴.

On receipt of an application for registration of a ship for the first time, the registrar⁵, if he is satisfied that that ship is eligible to be registered, must⁶:

- 480 (1) allocate to the ship a register number ('official number')⁷;
- 481 (2) in the case of a fishing vessel, allocate a port number⁸,

and must issue a carving and marking note⁹.

The registrar may, on request by a classification society¹⁰, allocate an official number to a ship notwithstanding that he is not yet satisfied as to its eligibility¹¹. Where a ship has had a number so allocated and that number has been carved into the ship's beam but the ship is not accepted as being eligible for registration, the number must be permanently defaced and a certificate to that effect provided by the classification society to the registrar¹².

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 I.e. one of the ports listed in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 31(1), Sch 2 Pt 1 or Pt 2, as is appropriate: see reg 31(1). The ports of choice for ships to be registered on Part I of the register are: Aberdeen; Aberystwyth; Alloa; Arbroath; Ardrossan; Ayr; Banff; Barnstaple; Barrow; Beaumaris; Belfast; Berwick-on-Tweed; Bideford; Blyth; Borrowstoness; Boston; Bridgwater; Bristol; Brixham; Buckie; Burntisland; Caernarvon; Campbeltown; Cardiff; Cardigan; Chester; Colchester; Coleraine; Cowes; Dartmouth; Dover; Dumfries; Dundee; Exeter; Falmouth; Faversham; Felixstowe; Fishguard; Fleetwood; Folkestone; Fowey; Fraserburgh; Glasgow; Gloucester; Goole; Grangemouth; Granton; Great Yarmouth; Greenock; Grimsby; Hartlepool; Hartlepool West; Harwich; Hull; Inverness; Ipswich; Irvine; King's Lynn; Kircaldy; Kirkwall; Lancaster; Leith; Lerwick; Littlehampton; Liverpool; Llanelli; London; Londonderry; Lowestoft; Maldon; Manchester; Maryport; Methil; Middlesbrough; Milford Haven; Montrose; Newcastle; Newhaven; Newport; Newry; North Shields; Padstow; Penzance; Peterhead; Plymouth; Poole; Portland; Port Talbot; Portsmouth; Preston; Ramsgate; Rochester; Runcorn; Rye; Salcombe; Scarborough; Scilly; Shoreham; South Shields; Southampton; St Ives; Stockton; Stornoway; Stranraer; Sunderland; Swansea; Teignmouth; Troon; Truro; Weymouth; Whitby; Whitehaven; Wick; Wigtown; Wisbech; and Workington: Sch 2 Pt 1 (amended by SI 1998/2976). As to the meaning of 'port of choice' see PARA 278 note 12. As to the meaning of 'register' for these purposes see PARA 255 note 1. Part I of the register is for ships, owned by qualified persons, which are not fishing vessels or registered on that Part which is restricted to small ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(a); and PARA 255. As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

The ports for ships to be registered on Part II of the register (fishing vessels), the port letters appearing in parentheses, are: Aberdeen (A); Aberystwyth (AB); Alloa (AA); Arbroath (AH); Ardrossan (AD); Ayr (AR); Ballantrae (BA); Banff (BF); Barnstaple (BE); Barrow (BW); Beaumaris (BS); Belfast (B); Berwick-on-Tweed (BK); Bideford (BD); Blyth (BH); Borrowstoness (BO); Boston (BN); Bridgwater (BR); Bristol (BL); Brixham (BM); Broadford (BRD); Buckie (BCK); Burntisland (BU); Caernarvon (CO); Campbeltown (CN); Cardiff (CF); Cardigan (CA); Carlisle (CL); Castlebay, Barra (CY); Chester (CH); Colchester (CK); Coleraine (CE); Cowes (CS); Dartmouth (DH); Dover (DR); Dumfries (DS); Dundee (DE); Exeter (E); Falmouth (FH); Faversham (F); Fleetwood (FD); Folkestone (FE); Fowey (FY); Fraserburgh (FR); Glasgow (GW); Gloucester (GR); Goole (GE); Grangemouth (GH);

Granton (GN); Great Yarmouth (YH); Greenock (GK); Grimsby (GY); Hartlepool (HL); Harwich (HH); Hull (H); Inverness (INS); Ipswich (IH); Irvine (IE); King's Lynn (LN); Kircaldy (KY); Kirkwall (K); Lancaster (LR); Leith (LH); Lerwick (LK); Littlehampton (LI); Liverpool (LL); Llanelli (LA); London (LO); Londonderry (LY); Lowestoft (LT); Maldon (MN); Manchester (MR); Maryport (MT); Methil (ML); Middlesbrough (MH); Milford Haven (M); Montrose (ME); Newcastle (NE); Newhaven (NN); Newport, Gwent (NT); Newry (N); Oban (OB); Padstow (PW); Penzance (PZ); Peterhead (PD); Plymouth (PH); Poole (PE); Portland (PO); Portsmouth (P); Port Talbot (PT); Preston (PN); Ramsgate (R); Rochester (RR); Rothesay (RO); Runcorn (RN); Rye (RX); St Ives (SS); Salcombe (SE); Scarborough (SH); Scilly (SC); Shields, North (SN); Shields, South (SSS); Shoreham (SM); Southampton (SU); Stockton (ST); Stornoway (SY); Stranraer (SR); Sunderland (SD); Swansea (SA); Tarbert, Loch Fyne (TT); Teignmouth (TH); Troon (TN); Truro (TO); Ullapool (UL); Weymouth (WH); Whitby (WY); Wick (WK); Wigtown (WN); Whitehaven (WA); Wisbech (WI); and Workington (WO): Sch 2 Pt 2 (amended by SI 1999/3206). 'Port letters' means the letters for the port of choice: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2) (definition substituted by SI 1999/3206). Part II of the register is reserved for fishing vessels: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(b); and PARA 255. As to the status of any Part II certificate under sea fisheries legislation see PARA 377.

The provisions of Sch 2 are applied also for the purposes of reg 72 (transfer of registration from relevant British possession) (as to which see PARA 342) and reg 79 (allocation to bareboat charter ship of port of choice and port numbers) (as to which see PARA 362).

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 31(1). Any reference in any Act other than the Merchant Shipping Act 1995 or in any other instrument made under any such other Act to the port of registration of the ship or the port to which the ship belongs is to be construed as a reference to the port of choice required to be marked by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 31, reg 53 (see PARA 316), reg 72 (see PARA 342) or reg 79 (see PARA 362): reg 122; Interpretation Act 1978 s 17(2)(b).

5 As to the meaning of 'registrar' see PARA 255 note 2.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 31(2).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 31(2)(a).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 31(2)(b) (substituted by SI 1999/3206). Accordingly, for these purposes, 'port number' means the number allocated for a fishing vessel within its port of choice under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 31(2)(b), reg 53(2) (see PARA 316) or reg 79(2)(a) (see PARA 362): reg 1(2) (definition added by SI 1999/3206).

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 31(2).

10 For these purposes, 'classification society' means a person authorised to act as a 'certifying authority' for the purposes of the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510 (as to which see PARA 248): Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2); Interpretation Act 1978 s 17(2)(b). Apart from any statutory requirements, it is established practice for shipowners to enter their vessels in one of the various classification societies of the world, of which the oldest is Lloyd's Register of Shipping. The classification is of importance to charterers and perhaps most particularly to marine insurers. As to Lloyd's see **INSURANCE** vol 25 (2003 Reissue) PARA 24.

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 31(3).

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 31(4).

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E. CARVING AND MARKING

280. Carving and marking of ship on first registration.

On receipt of a carving and marking note on first registration¹, the owner² must:

- 482 (1) if the ship³ has not already been surveyed or measured⁴, cause it to be so surveyed or measured⁵;
- 483 (2) cause the ship to be carved and marked⁶;
- 484 (3) where required by the provisions which govern the inspection of marks⁷, cause the ship's carving and marking to be inspected by an inspector of marks⁸.

1 See PARA 279.

2 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

3 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

4 I.e. as required by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29 (as to which see PARA 276): see reg 32(a).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 32(a).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 32(b). The text refers to the ship being carved and marked in accordance with reg 32(b), Sch 3 (as to which see PARA 281): see reg 32(b). The provisions of Sch 3 are applied also for the purposes of reg 34 (verification) (as to which see PARA 287), reg 54 (change of name) (as to which see PARA 315) and reg 80 (marking of bareboat charter ship) (as to which see PARA 363).

7 I.e. where required by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 33 (as to which see PARA 286): see reg 32(c).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 32(c). For these purposes, 'inspector of marks' means an authorised measurer or any person authorised by the Secretary of State to verify the carving and marking of a ship under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: reg 1(2). As to the meaning of 'authorised measurer' see PARA 276 note 6. As to the Secretary of State see PARA 38.

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281. General requirements relating to carving and marking of ship.

Every ship¹ is required, before it may be registered, to be marked permanently and conspicuously to the satisfaction of the registrar² in accordance with the provisions which govern the carving and marking of ships³.

The Secretary of State⁴ may exempt any class of ship from all or any of the requirements relating to carving and marking⁵, subject to such conditions, if any, as he thinks fit⁶.

The name of a ship⁷ must be marked in Roman letters and any numerals must be in Roman or Arabic numerals⁸.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the meaning of 'registrar' see PARA 255 note 2.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 32, Sch 3 para 1. The text refers to the provisions governing the carving and marking of ships which are contained in Sch 3 (see also PARA 282 et seq): see Sch 3 para 1. As to offences in connection with a ship's registration marks see PARA 1120.

4 As to the Secretary of State see PARA 38.

5 le from the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3: see Sch 3 para 2.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 2.

7 As to the proposal and approval of a ship's name see PARAS 277, 278.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 7 (amended by SI 1998/2976).

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282. How ships other than fishing vessels and certain pleasure vessels are to be marked.

Subject to any exemption in respect of that class of ship¹, a ship other than a fishing vessel², or a pleasure vessel³ which is under 24 metres⁴, is to be marked as follows⁵:

- 485 (1) its name⁶ must be marked on each of its bows, and its name and its port of choice⁷ must be marked on its stern⁸;
- 486 (2) the marking is to be on a dark ground in white or yellow letters, or on a light ground in black letters, the letters being not less than ten centimetres high and of proportional breadth⁹; and
- 487 (3) its official number¹⁰ and the number denoting its registered tonnage¹¹ must be cut on its main beam or, if that is not possible, marked or fixed thereon in the manner prescribed¹² for pleasure vessels under 24 metres¹³.

1 As to the Secretary of State's power to exempt any class of ship see PARA 281. As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 32, Sch 3 para 3(a). As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

3 As to the meaning of 'pleasure vessel' for these purposes see PARA 275 note 6.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 3(b).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 3. As to offences in connection with a ship's registration marks see PARA 1120.

6 As to the proposal and approval of a ship's name see PARAS 277, 278.

7 As to the meaning of 'port of choice' see PARA 278 note 12. As to the allocation of port of choice see PARA 279.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 3(i).

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 3(ii).

10 As to the allocation of a ship's official number see PARA 279.

11 As to the ascertainment and certification of tonnage for registration purposes see PARA 276.

12 Ie the manner prescribed in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 4(a) (see PARA 283): see Sch 3 para 3(iii).

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 3(iii).

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283. How pleasure vessels under twenty-four metres in length are to be marked.

A pleasure vessel¹ which is under 24 metres in length is to be marked as follows²:

- 488 (1) the official number³ and registered tonnage⁴ are: (a) to be marked on the main beam or, if there is no main beam, on a readily accessible visible permanent part of the structure of the pleasure vessel either by cutting in, centre punching or raised lettering⁵; or (b) to be engraved on plates of metal, wood or plastic, secured to the main beam (or, if there is no main beam, to a readily accessible permanent part of the structure) with rivets, through bolts with the ends clenched, or screws with the slots removed⁶;
- 489 (2) the name⁷ and port of choice⁸, unless an exempted ship⁹, are to be marked on a conspicuous and permanent part of the stern on a dark ground in white or yellow letters, or on a light ground in black letters, the letters being not less than five centimetres high and of proportionate breadth, or, where this is not possible, by the alternative methods given as follows¹⁰: (a) by engraving on plates of metal or of plastic or by cutting in on a shaped wooden chock; where a shaped wooden chock is used, it should be secured to the hull through bolts, the ends being clenched¹¹; or (b) by individual glass reinforced plastic letters and numbers approximately two millimetres in thickness, these to be fixed to the hull with epoxy adhesive, and painted with suitable paint and coated with translucent epoxy resin¹²; (c) where metal or plastic plates have been used, these must be fixed by the use of epoxy adhesives; metal or plastic plates secured by adhesives should be coated with translucent epoxy resin after they have been fixed in position¹³.

1 As to the meaning of 'pleasure vessel' for these purposes see PARA 275 note 6.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 32, Sch 3 para 4. As to offences in connection with a ship's registration marks see PARA 1120.

3 As to the allocation of a ship's official number see PARA 279.

4 As to the ascertainment and certification of tonnage for registration purposes see PARA 276.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 4(a)(i).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 4(a)(ii).

7 As to the proposal and approval of a ship's name see PARAS 277, 278.

8 As to the meaning of 'port of choice' see PARA 278 note 12. As to the allocation of port of choice see PARA 279.

9 As to the Secretary of State's power to exempt any class of ship see PARA 281.

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 4(b).

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 4(b)(i).

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 4(b)(ii).

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 4(b)(iii).

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284. How fishing vessels are to be marked.

A fishing vessel¹ is to be marked as follows²:

- 490 (1) the name of the vessel³ and the port of choice⁴ must be painted in white on a black background or in black on a white background outside the stern of the boat in letters which must not be less than eight centimetres in height and 1.5 centimetres in breadth⁵; and
- 491 (2) the port letters⁶ and the port number⁷ must be painted or displayed on both sides of the bow and on each quarter, as high above the water as possible so as to be clearly visible from the sea and the air, in white on a black background or black on a white background⁸;
- 492 (3) for vessels not over 17 metres in length, the height of the port letters and port number must be at least 25 centimetres with a line thickness of at least four centimetres⁹;
- 493 (4) for vessels over 17 metres in length, the height of the port letters and port number must be at least 45 centimetres with a line thickness of at least six centimetres¹⁰;
- 494 (5) the port letters and port number must in addition be painted or displayed on the wheel house top or some other prominent horizontal surface¹¹;
- 495 (6) the vessel's official number¹² must be carved into the main beam of the vessel or, if that is not possible, marked or fixed thereon in the manner prescribed¹³ for pleasure vessels under 24 metres in length¹⁴.

1 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 32, Sch 3 para 5. As to offences in connection with a ship's registration marks see PARA 1120.

3 As to the proposal and approval of a ship's name see PARAS 277-278.

4 As to the meaning of 'port of choice' see PARA 278 note 12. As to the allocation of port of choice see PARA 279.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 5(a).

6 As to the meaning of 'port letters' see PARA 279 note 3.

7 As to the meaning of 'port number' see PARA 279 note 8.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 5(b) (amended by SI 1999/3206).

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 5(c) (amended by SI 1999/3206).

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 5(d) (amended by SI 1999/3206).

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 5(e) (amended by SI 1999/3206).

- 12 As to the allocation of a ship's official number see PARA 279.
- 13 In the manner prescribed in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 4(a) (see PARA 283): see Sch 3 para 5(f).
- 14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 5(f).

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285. Marking of ship's draught.

A scale of decimetres, or metres and decimetres, denoting a draught of water must be marked on a ship¹, other than an exempted ship², on each side of its stem and its stern post, as follows³:

- 496 (1) in figures in two-decimetre intervals, if the scale is in decimetres⁴; and
- 497 (2) in figures at each metre interval and at intervening two-decimetre intervals, if the scale is in metres and decimetres⁵,

the capital letter 'M' being placed after each metre figure; the top figure of the scale showing both the metre and (except where it marks a full metre interval) the decimetre figure; the lower line of the figures, or figures and letters, as the case may be, coinciding with the draught line denoted thereby; the figures and letters being not less than one decimetre in length and being marked by being cut in and painted white or yellow on a dark ground, or in any such other way as the Secretary of State approves⁶.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the Secretary of State's power to exempt any class of ship see PARA 281. As to the Secretary of State see PARA 38.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 32, Sch 3 para 6. As to offences in connection with a ship's registration marks see PARA 1120.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 6(a).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 6(b).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 3 para 6.

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286. Inspection of marks.

In respect of a ship¹, other than a pleasure vessel² which is under 24 metres in length, an inspector of marks³ must satisfy himself that the ship has been duly carved and marked⁴ and, when so satisfied, must complete the carving and marking note and return it to the registrar⁵. In respect of a fishing vessel⁶, the carving and marking note may also be returned to the local office⁷.

In respect of a pleasure vessel which is under 24 metres in length, the owner⁸ must certify that the ship has been duly carved and marked⁹ and return the certified carving and marking note to the registrar¹⁰.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the meaning of 'pleasure vessel' for these purposes see PARA 275 note 6.

3 As to the meaning of 'inspector of marks' see PARA 280 note 8.

4 I.e. carved and marked in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 32(b), Sch 3 (as to which see PARA 281 et seq): see reg 33(1).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 33(1). As to the meaning of 'registrar' see PARA 255 note 2. As to the issue of a carving and marking note on first registration see PARA 279. As to offences in connection with a ship's marks see PARA 1120.

6 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 33(1). As to the meaning of 'local office' see PARA 269 note 5.

8 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

9 I.e. carved and marked in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 32(b), Sch 3 (as to which see PARA 281 et seq): see reg 33(2).

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 33(2).

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287. Verification of measurement and carving and marking.

If the registrar¹ is not satisfied:

- 498 (1) that the particulars of the measurement and tonnage of the ship² or such other particulars describing the identity of the ship, as have been required by the Secretary of State³, furnished to him are correct⁴; or
- 499 (2) that the ship is carved and marked in the required manner⁵,

he may direct the owner⁶ to have the measurement or other details and/or carving or marking of the vessel verified by an authorised measurer⁷ or inspector of marks⁸, as appropriate⁹.

If the owner fails to comply with the direction of the registrar, the registrar may:

- 500 (a) if the ship is not registered, refuse it registration until his direction has been complied with¹⁰; or
- 501 (b) if the ship is registered, serve notice on the owner or managing owner¹¹ or any charterer, manager or operator of the ship requiring him to produce evidence within 30 days sufficient to satisfy him that the particulars of the measurement and tonnage are, or that the marking of the ship is, correct¹².

If, at the expiry of that period of 30 days, the registrar is not so satisfied, he may:

- 502 (i) extend the notice and ask for further information¹³; or
- 503 (ii) serve a final notice which closes the ship's registration, such closure to be effected seven days after the service of that notice¹⁴.

Where a ship's registration is so closed, the owner of the ship must forthwith surrender its certificate of registry¹⁵.

Where the registrar serves such a notice on the owner of a ship in respect of which a mortgage is registered, he must send a copy of that notice to the mortgagee at the address recorded in the register¹⁶ for the mortgagee¹⁷.

1 As to the meaning of 'registrar' see PARA 255 note 2.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 As to the Secretary of State see PARA 38.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 34(1)(a) (amended by SI 1998/2976).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 34(1)(b). The text refers to carving and marking in the manner required by reg 32(b), Sch 3 (as to which see PARA 281 et seq): see reg 34(1)(b).

6 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

- 7 As to the meaning of 'authorised measurer' see PARA 276 note 6.
- 8 As to the meaning of 'inspector of marks' see PARA 280 note 8.
- 9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 34(1) (amended by SI 1998/2976). As to offences in connection with a ship's marks see PARA 1120.
- 10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 34(2)(a).
- 11 The term 'managing owner' is used in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 23 (appointment of managing owner where ship has more than one owner) (as to which see PARA 271), as well as in reg 34, but it is not defined; however, see PARA 238.
- 12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 34(2)(b).
- 13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 34(3)(a).
- 14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 34(3)(b).
- 15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 34(4). As to the meaning of 'certificate of registry' see PARA 255 note 17.
- 16 As to the meaning of 'register' see PARA 255 note 1.
- 17 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 34(5).

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288. Cancellation of carving and marking note.

If a carving and marking note duly issued¹ is not duly completed and returned to the registrar² within three months of its issue, the registrar may cancel it and the application is to be treated as having been withdrawn³.

1 le under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 31 (as to which see PARA 279): see reg 35.

2 As to the meaning of 'registrar' see PARA 255 note 2.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 35.

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F. COMPLETION OF REGISTRATION

289. Registration and refusal of registration of a ship.

Where a registrar¹ is satisfied in respect of an application that²:

- 504 (1) the ship³ is eligible to be registered as a British ship⁴; and
- 505 (2) the ship has been duly carved and marked⁵ and that the appropriate survey or measuring certificate has been provided⁶; and
- 506 (3) the particulars of the ship furnished to him are correct⁷; and
- 507 (4) title to the ship has been adequately proved, where necessary⁸; and
- 508 (5) the relevant requirements imposed by the statutory provisions governing the registration of ships⁹ have been complied with¹⁰,

he must register the ship by entering in the register¹¹ the prescribed particulars¹² of the ship and its owners¹³. If the registrar is not so satisfied, he must¹⁴ refuse the application¹⁵.

The registrar may refuse to register any fishing vessel¹⁶ if he is not satisfied that there is in force as respects the vessel any certificate required to be so in force¹⁷ by the Merchant Shipping Act 1995¹⁸.

The registrar must refuse to register any vessel intending to fish in Community waters if that vessel has received a decommissioning grant or any other financial assistance from the European Commission or a member state¹⁹ on condition that it refrains from fishing in those waters or has been withdrawn from fishing as a condition of an award of a construction grant to another boat²⁰.

Notwithstanding that a ship is otherwise entitled to be registered, the registrar may refuse to register it if, taking into account any requirement of the Merchant Shipping Act 1995, including any instrument made thereunder, relating to the condition of the ship or its equipment so far as it is relevant to its safety or to any risk of pollution or to the safety, health and welfare of persons employed or engaged in any capacity on board the ship, he considers that it would be inappropriate for the ship to be registered²¹.

1 As to the meaning of 'registrar' see PARA 255 note 2.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(1).

3 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(1)(a). As to the meaning of 'British ship' under the Merchant Shipping Act 1995 see PARA 230.

5 As to the carving and marking of a ship on first registration see PARA 280 et seq.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(1)(b). As to the survey and measurement of ships see PARA 276 et seq.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(1)(c).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(1)(d).

9 le the relevant requirements of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138 (see PARAS 255 et seq, 290 et seq): see reg 36(1)(e).

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(1)(e).

11 As to the meaning of 'register' for these purposes see PARA 255 note 1.

12 le the particulars specified in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(1), Sch 4 (see PARA 290 et seq): see reg 36(1). The provisions of Sch 4 are applied also for the purposes of reg 82 (registration of bareboat charter ships) (as to which see PARA 364).

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(1). As to the meaning of 'owner' for these purposes see PARA 255 note 13.

14 le subject to the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 106 (requirement for supplementary information) (see PARA 372): see reg 36(4).

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(4).

16 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

17 le by virtue of the Merchant Shipping Act 1995 s 125 (see PARA 607): see reg 36(2); Interpretation Act 1978 s 17(2)(b).

18 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(2); Interpretation Act 1978 s 17(2)(b).

19 'Member state' means a state which is a member of the European Communities: see the European Communities Act 1972 s 1(2), Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1.

20 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(3).

21 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(5); Interpretation Act 1978 s 17(2)(b).

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290. Particulars of owners who are individuals.

The following information is to be registered about each owner¹ of a ship² who is an individual³:

- 509 (1) surname, forename and title⁴;
- 510 (2) address⁵;
- 511 (3) nationality⁶;
- 512 (4) number of shares owned by him and, if held jointly, with whom the shares are held⁷;
- 513 (5) the name of the managing owner⁸.

1 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(1), Sch 4 para 1.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 1(a).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 1(b).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 1(c).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 1(d).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 1(e). The term 'managing owner' is used in reg 23 (appointment of managing owner where ship has more than one owner) (as to which see PARA 271), as well as in reg 34, but it is not defined; however, see PARA 238.

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291. Particulars of owners who are bodies corporate.

The following information is to be registered about each owner¹ of a ship² which is a body corporate³:

- 514 (1) name of owner⁴;
- 515 (2) the address of its registered office⁵;
- 516 (3) country of incorporation⁶;
- 517 (4) where it is a body corporate incorporated in the United Kingdom⁷ or in a relevant British possession⁸, its principal place of business⁹;
- 518 (5) where it is a body corporate incorporated in a member state¹⁰ other than the United Kingdom, its place of business in the United Kingdom¹¹;
- 519 (6) number of shares owned by the company and, if held jointly, with whom the shares are held¹².

1 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(1), Sch 4 para 2.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 2(a).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 2(b).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 2(c).

7 As to the meaning of 'United Kingdom' see PARA 17 note 3. As to companies and their incorporation etc in England and Wales see **COMPANIES** vol 14 (2009) PARA 119 et seq.

8 As to the meaning of 'relevant British possession' under the Merchant Shipping Act 1995 see PARA 17 note 3.

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 2(d). As to a person's place of business see **COMPANIES** vol 14 (2009) PARA 122.

10 'Member state' means a state which is a member of the European Communities: see the European Communities Act 1972 s 1(2), Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1.

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 2(e).

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 2(f).

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292. Particulars of owners who are representative persons or charterers of fishing vessels.

The following information is to be registered about: (1) any representative person appointed in relation to a ship¹; and (2) in respect of fishing vessels², any charterer³, namely:

- 520 (a) the full name of the individual or body corporate⁴;
- 521 (b) the address of the individual or the place of business in the United Kingdom⁵ of the body corporate⁶.

1 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(1), Sch 4 para 3(a). As to the appointment of representative persons in relation to a ship see Pt V (regs 18, 19); and PARAS 267-268. As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 3(b).

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 3(b)(i).

5 As to the meaning of 'United Kingdom' see PARA 17 note 3. As to a person's place of business see **COMPANIES** vol 14 (2009) PARA 122.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 3(b)(ii).

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293. Particulars to be registered about ships.

The following information is to be registered about ships¹ registered or to be registered on Part I of the register²:

- 522 (1) name³;
- 523 (2) either the IMO number⁴ or the International Standards Organisation Hull Identification Number ('HIN'), as appropriate⁵;
- 524 (3) radio call sign⁶;
- 525 (4) port of choice⁷;
- 526 (5) official number⁸;
- 527 (6) year of build⁹;
- 528 (7) method of propulsion, for example whether sail, steam, motor or dumb¹⁰;
- 529 (8) where built¹¹;
- 530 (9) name and address of builders¹²;
- 531 (10) date keel laid/when built¹³;
- 532 (11) length (metric units)¹⁴;
- 533 (12) breadth (metric units)¹⁵;
- 534 (13) depth (metric units)¹⁶;
- 535 (14) type of ship, for example dry cargo, oil tanker, passenger, bulk carrier¹⁷;
- 536 (15) material used to construct hull¹⁸;
- 537 (16) such of the following tonnages as are specified in the certificate of survey: gross, net and registered¹⁹;
- 538 (17) make and model of engine or engines²⁰;
- 539 (18) total power of engines in kilowatts²¹.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(1), Sch 4 para 4. As to the meaning of 'register' for these purposes see PARA 255 note 1. Part I of the register, as mentioned in the text, is for ships, owned by qualified persons, which are not fishing vessels or registered on that Part which is restricted to small ships: see reg 2(1)(a); and PARA 255. As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(a). As to the proposal and approval of a ship's name see PARAS 277, 278.

4 'IMO number' is not defined for the purposes of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138. However, under the Tonnage Tax (Training Requirement) Regulations 2000, SI 2000/2129, the IMO number is the number assigned to the ship in accordance with Resolution A.600(15) of 19 November 1987 of the International Maritime Organisation: see reg 2; and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1475. As to the International Maritime Organisation see PARA 13.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(b) (substituted by SI 1998/2976).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(c).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(d). As to the meaning of 'port of choice' see PARA 278 note 12. As to the allocation of port of choice see PARA 279.

- 8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(e). As to the allocation of a ship's official number see PARA 279.
- 9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(f).
- 10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(g).
- 11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(h).
- 12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(i).
- 13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(j).
- 14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(k).
- 15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(l).
- 16 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(m).
- 17 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(n).
- 18 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(o).
- 19 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(p) (Sch 4 para 4(p) substituted for Sch 4 para 4(p)-(r) as originally enacted by SI 1998/2976). As to the survey and measurement of ships, including the ascertainment and certification of tonnage for registration purposes, see PARA 276.
- 20 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(s).
- 21 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 4(t).

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294. Particulars to be registered about fishing vessels.

The following information is to be registered about fishing vessels¹ registered or to be registered on Part II of the register²:

- 540 (1) official number³ and EC number⁴;
- 541 (2) IMO number⁵;
- 542 (3) port letters⁶ and port number⁷;
- 543 (4) name⁸;
- 544 (5) radio call sign⁹;
- 545 (6) whether full¹⁰ or simple¹¹ registration¹²;
- 546 (7) material used to construct hull¹³;
- 547 (8) name of builder¹⁴;
- 548 (9) year of build¹⁵;
- 549 (10) place and country of build¹⁶;
- 550 (11) date of entry into service¹⁷;
- 551 (12) overall length (metric units)¹⁸;
- 552 (13) registered length (metric units)¹⁹;
- 553 (14) breadth (metric units)²⁰;
- 554 (15) depth (metric units)²¹;
- 555 (16) gross tonnage²²;
- 556 (17) net tonnage²³;
- 557 (18) maximum continuous engine power²⁴ in kilowatts, or, if the owner²⁵ notifies the registrar²⁶ of a modification, permanently de-rated engine power²⁷ in kilowatts²⁸;
- 558 (19) make and model of engine²⁹;
- 559 (20) number of cylinders³⁰;
- 560 (21) number of engines³¹;
- 561 (22) number of revolutions per minute³²;
- 562 (23) modification explanation³³.

1 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(1), Sch 4 para 5. Part II of the register, as mentioned in the text, is reserved for fishing vessels: see reg 2(1)(b); and PARA 255. As to the meaning of 'register' see PARA 255 note 1. As to the status of any Part II certificate under sea fisheries legislation see PARA 377.

3 As to the allocation of a ship's official number see PARA 279.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(a).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(b). As to the IMO number see PARA 293 note 4.

6 As to the meaning of 'port letters' see PARA 279 note 3.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(c) (amended by SI 1999/3206). As to the meaning of 'port number' see PARA 279 note 8.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(d). As to the proposal and approval of a ship's name see PARAS 277, 278.

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(e).

10 As to the meaning of 'full registration' see PARA 256.

11 As to the meaning of 'simple registration' see PARA 256.

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(f).

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(g).

14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(h).

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(i).

16 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(j).

17 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(k).

18 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(l).

19 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(m).

20 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(n).

21 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(o).

22 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(p). As to the survey and measurement of ships, including the ascertainment and certification of tonnage for registration purposes, see PARA 276.

23 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(q).

24 As to the meaning of 'maximum continuous engine power' see PARA 275 note 14.

25 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

26 As to the meaning of 'registrar' see PARA 255 note 2.

27 As to the meaning of 'permanently de-rated engine power' see PARA 275 note 15.

28 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(r) (substituted by SI 1999/3206).

29 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(s).

30 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(t) (Sch 4 para 5(t)-(w) added by SI 1999/3206).

31 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(u) (as added: see note 30).

32 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(v) (as added: see note 30).

33 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 5(w) (as added: see note 30). As to the meaning of 'modification explanation' see PARA 275 note 15.

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295. Particulars to be registered about bareboat charter ships.

In addition to the information otherwise to be registered¹ in respect of ships² registered or to be registered on Part I of the register³ or in respect of fishing vessels registered or to be registered on Part II of the register⁴, the following is to be registered in respect of bareboat charter ships⁵:

- 563 (1) the name and address of the owner⁶;
- 564 (2) the name and address of the charterer⁷;
- 565 (3) the name and address of any representative person⁸;
- 566 (4) the unique number allocated to the ship for identification purposes by its primary register⁹;
- 567 (5) its country of original registration¹⁰;
- 568 (6) the commencement date of the charter period and its expiry date¹¹;
- 569 (7) the name by which the ship is known on the primary register (or a translation of that name)¹².

1 The information in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 36(1), Sch 4 para 4 (as to which see PARA 293) or in Sch 4 para 5 (as to which see PARA 294): see Sch 4 para 6.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part I of the register, as mentioned in the text, is for ships, owned by qualified persons, which are not fishing vessels or registered on that Part which is restricted to small ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(a); and PARA 255. As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

4 Part II of the register, as mentioned in the text, is reserved for fishing vessels: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(b); and PARA 255. As to the status of any Part II certificate under sea fisheries legislation see PARA 377.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 6. As to the meaning of 'bareboat charter ship' see PARA 255 note 9.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 6(a). As to the meaning of 'owner' for these purposes see PARA 255 note 13.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 6(b).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 6(c). As to the appointment of representative persons in relation to a ship see Pt V (regs 18, 19); and PARAS 267-268.

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 6(d) (substituted by SI 1999/3206). For these purposes, 'primary register' means the register on which the ship is registered at the time the application is made to register the ship as a bareboat charter ship: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2).

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 6(e).

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 6(f). As to the meaning of 'charter period' for these purposes under the Merchant Shipping Act 1995 see PARA 357 note 11.

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 4 para 6(g).

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296. Period of registration.

The registration of a ship¹ is valid, unless it is duly terminated², for a period of five years beginning with the date of registration specified in the certificate of registry³ and expires at the end of that period unless it is duly⁴ renewed⁵.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 Ie unless it is terminated under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 39 (amended by SI 1998/2976).

3 As to the meaning of 'certificate of registry' see PARA 255 note 17.

4 Ie unless it is renewed in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 42 (as to which see PARA 305): see reg 39 (as amended: see note 2).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 39 (as amended: see note 2). Regulation 39 is expressed to be subject to the transitional provisions contained in reg 116, whose effect has now lapsed: see reg 39 (as so amended). As to the surrender of a certificate on the termination or expiry of registration see PARA 375.

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297. Documents to be retained by the registrar.

On registering a ship¹, the registrar² must retain in his possession a copy of any builder's certificate³ or bill of sale or other evidence of title produced on first registration, any certificate of measurement or survey⁴ and all declarations of eligibility⁵.

On a fishing vessel⁶ changing from simple registration⁷ to full registration⁸, the registrar must retain in his possession a copy of the evidence adduced for that change⁹.

On registering a fishing vessel which has had its engine power permanently de-rated¹⁰, the registrar must retain in his possession the modification explanation¹¹ duly submitted to him¹².

All documents which have been produced to the registrar to establish title must be returned to the applicant once the ship has been registered¹³. The documents must be stamped by the registrar to indicate that they have been used for registration of a ship¹⁴.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the meaning of 'registrar' see PARA 255 note 2.

3 As to the meaning of 'builder's certificate' see PARA 275 note 5.

4 As to the survey and measurement of ships see PARA 276.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 40(1)(a). As to the meaning of 'declaration of eligibility' see PARA 272 note 2.

6 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

7 As to the meaning of 'simple registration' see PARA 256.

8 As to the meaning of 'full registration' see PARA 256.

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 40(1)(b) (amended by SI 1999/3206).

10 As to the meaning of 'permanently de-rated engine power' see PARA 275 note 15.

11 As to the meaning of 'modification explanation' see PARA 275 note 15.

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 40(1)(c) (added by SI 1999/3206). The text refers to the modification explanation submitted to the registrar in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(2) (see PARA 275): see reg 40(1)(c) (as so added).

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 40(2).

14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 40(2).

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G. CERTIFICATES OF REGISTRY; TEMPORARY REGISTRATION DOCUMENTS FOR FISHING VESSELS

298. Issue of certificate of registry.

Upon registering a ship¹, the registrar² must issue and send to the owner³ a certificate of registry⁴ containing the prescribed particulars⁵.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the meaning of 'registrar' see PARA 255 note 2.

3 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

4 As to the meaning of 'certificate of registry' see PARA 255 note 17.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 37. The particulars so prescribed are those set out in reg 37, Sch 5 (as to which see PARAS 299-301): see reg 37. The provisions of Sch 5 are applied also for the purposes of reg 82 (registration of a bareboat charter ship) (as to which see PARA 364). As to the issue of duplicate certificates of registry in certain circumstances see PARA 373.

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299. Details contained in certificate of registry for a ship.

A certificate of registry¹ for a ship² registered or to be registered on Part I of the register³ must contain⁴:

- 570 (1) the full name and address of the owner⁵ or owners⁶;
- 571 (2) the number of shares owned by each owner and, if any are jointly owned, with whom they are owned⁷;
- 572 (3) the following information about the ship⁸:
 - 9
 - 10. (a) name⁹;
 - 11. (b) either the IMO number¹⁰ or the International Standards Organisation Hull Identification Number ('HIN'), as appropriate¹¹;
 - 12. (c) radio call sign¹²;
 - 13. (d) port of choice¹³;
 - 14. (e) official number¹⁴;
 - 15. (f) year of build¹⁵;
 - 16. (g) method of propulsion, for example whether sail, steam, motor or dumb¹⁶;
 - 17. (h) length (metric units)¹⁷;
 - 18. (i) breadth (metric units)¹⁸;
 - 19. (j) depth (metric units)¹⁹;
 - 20. (k) type of ship, for example dry cargo, oil tanker, passenger, bulk carrier²⁰;
 - 21. (l) such of the following tonnages as are specified in the certificate of survey: gross, net and registered²¹;
 - 22. (m) engine make and model²²;
 - 23. (n) engine power in kilowatts²³;
 - 10
- 573 (4) the date of issue of the certificate²⁴;
- 574 (5) the date the certificate expires²⁵.

1 As to the meaning of 'certificate of registry' see PARA 255 note 17.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part I of the register, as mentioned in the text, is for ships, owned by qualified persons, which are not fishing vessels or registered on that Part which is restricted to small ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(a); and PARA 255. As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 37, Sch 5 para 1.

5 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(a).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(b).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c).

- 9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c)(i). As to the proposal and approval of a ship's name see PARAS 277, 278.
- 10 As to the IMO number see PARA 293 note 4.
- 11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c)(ii) (substituted by SI 1998/2976).
- 12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c)(iii).
- 13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c)(iv). As to the meaning of 'port of choice' see PARA 278 note 12. As to the allocation of port of choice see PARA 279.
- 14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c)(v). As to the allocation of a ship's official number see PARA 279.
- 15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c)(vi).
- 16 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c)(vii).
- 17 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c)(viii).
- 18 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c)(ix).
- 19 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c)(x).
- 20 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c)(xi).
- 21 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c)(xii) (Sch 5 para 1(c)(xii) substituted for Sch 5 para 1(c)(xii)-(xiv) as originally enacted by SI 1998/2976). As to the survey and measurement of ships, including the ascertainment and certification of tonnage for registration purposes, see PARA 276.
- 22 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c)(xv).
- 23 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(c)(xvi).
- 24 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(d).
- 25 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 1(e).

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300. Details contained in certificate of registry for a fishing vessel.

A certificate of registry¹ for a fishing vessel² registered or to be registered on Part II of the register³ must contain⁴:

- 575 (1) the name and address of each owner⁵;
 - 576 (2) the name and address of any charterer⁶;
 - 577 (3) the number of shares and, if any are jointly owned, with whom they are owned⁷;
 - 578 (4) the following details about the vessel⁸:
- 11
- 24. (a) name⁹;
 - 25. (b) port of choice¹⁰ and port number¹¹;
 - 26. (c) official number¹²;
 - 27. (d) IMO number¹³;
 - 28. (e) radio call sign¹⁴;
 - 29. (f) registered length¹⁵;
 - 30. (g) overall length¹⁶;
 - 31. (h) breadth¹⁷;
 - 32. (i) depth¹⁸;
 - 33. (j) net tonnage¹⁹;
 - 34. (k) gross tonnage²⁰;
 - 35. (l) engine make and model²¹;
 - 36. (m) maximum continuous engine power²², in kilowatts, or if the owner notifies the registrar²³ of a modification, permanently de-rated engine power²⁴ in kilowatts²⁵;
 - 37. (n) year of build²⁶;
 - 38. (o) date of entry into service²⁷;
 - 39. (p) modification explanation²⁸;
- 12
- 579 (5) the date and time of the issue of the certificate²⁹;
 - 580 (6) the date of expiry of the certificate³⁰;
 - 581 (7) the kind of registration, that is, whether it is full³¹ or simple registration³².

1 As to the meaning of 'certificate of registry' see PARA 255 note 17.

2 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

3 Part II of the register, as mentioned in the text, is reserved for fishing vessels: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(b); and PARA 255. As to the meaning of 'register' see PARA 255 note 1. As to the status of any Part II certificate under sea fisheries legislation see PARA 377.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 37, Sch 5 para 2.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(a). As to the meaning of 'owner' for these purposes see PARA 255 note 13.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(b).

- 7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(c).
- 8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d).
- 9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(i). As to the proposal and approval of a ship's name see [PARAS 277, 278](#).
- 10 As to the meaning of 'port of choice' see [PARA 278](#) note 12. As to the allocation of port of choice see [PARA 279](#).
- 11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(ii) (amended by SI 1999/3206). As to the meaning of 'port number' see [PARA 279](#) note 8.
- 12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(iii). As to the allocation of a ship's official number see [PARA 279](#).
- 13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(iv). As to the IMO number see [PARA 293](#) note 4.
- 14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(v).
- 15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(vi).
- 16 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(vii).
- 17 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(viii).
- 18 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(ix).
- 19 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(x).
- 20 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(xi).
- 21 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(xii).
- 22 As to the meaning of 'maximum continuous engine power' see [PARA 275](#) note 14.
- 23 As to the meaning of 'registrar' see [PARA 255](#) note 2.
- 24 As to the meaning of 'permanently de-rated engine power' see [PARA 275](#) note 15.
- 25 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(xiii) (substituted by SI 1999/3206).
- 26 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(xiv).
- 27 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(xv).
- 28 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(d)(xvi) (added by SI 1999/3206). As to the meaning of 'modification explanation' see [PARA 275](#) note 15.
- 29 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(e).
- 30 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(f).
- 31 As to the meaning of 'full registration' see [PARA 256](#).
- 32 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(g) (added by SI 1998/2976). As to the meaning of 'simple registration' see [PARA 256](#).

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301. Details contained in certificate of registry for a bareboat charter ship.

A certificate of bareboat charter registry¹ for ships² registered or to be registered on Part IV of the register³ must contain certain of the details prescribed for ships other than fishing vessels⁴ or, as the case may be, those prescribed for fishing vessels⁵, and the following⁶:

- 582 (1) the name and address of the charterer⁷;
- 583 (2) the unique number allocated to the ship for identification purposes by its primary register⁸;
- 584 (3) the country of primary registration⁹;
- 585 (4) the original name (or a translation thereof) if different from its registered name¹⁰.

1 As to the meanings of 'certificate of bareboat charter' and 'certificate of registry' see PARA 255 note 17.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 Part IV of the register is for ships which are bareboat charter ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(d); and PARA 255. As to the meaning of 'bareboat charter ship' see PARA 255 note 9; and as to the meaning of 'register' for these purposes see PARA 255 note 1.

4 I.e. the details prescribed by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 37, Sch 5 para 1(a), (c)-(e) (as to which see PARA 299): see Sch 5 para 3 (amended by SI 1998/2976). As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

5 I.e. the details prescribed by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 2(a), (b), (d)-(f) (as to which see PARA 300): see Sch 5 para 3 (as amended: see note 4).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 3 (as amended: see note 4).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 3(a).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 3(b) (substituted by SI 1999/3206). As to the meaning of 'primary register' see PARA 295 note 9.

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 3(c).

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Sch 5 para 3(d) (amended by SI 1994/541).

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302. Status of certificate of registration.

The certificate of registration¹ of a British ship² may be used only for the lawful navigation of the ship and may not be subject to detention to secure any private right or claim³.

1 As to certificates of registration see PARA 298 et seq.

2 As to the meaning of 'British ship' under the Merchant Shipping Act 1995 see PARA 230; and as to the meaning of 'ship' see PARA 229.

3 Merchant Shipping Act 1995 s 13.

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303. Temporary registration documents for fishing vessels.

The registrar¹ may, upon registering a fishing vessel², if the owner³ so requests, issue to the owner through a local office⁴ a temporary registration document⁵. The document must contain the registered particulars of the vessel and must specify the period, not exceeding two months, for which it is valid⁶.

During the period of its validity, a temporary registration document has the effect of a certificate of registry⁷.

1 As to the meaning of 'registrar' see PARA 255 note 2.

2 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

3 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

4 As to the meaning of 'local office' see PARA 269 note 5.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 38(1).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 38(1).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 38(2). As to the meaning of 'certificate of registry' see PARA 255 note 17.

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H. RENEWAL OF REGISTRATION

304. Renewal notices and time limit for renewal.

At least three months (but not more than six months) before the expiry of the registration period¹ for a ship², the registrar³ must issue to the ship's owner⁴ a renewal notice⁵.

The owner may apply for renewal at any time between the date of issue of the renewal notice and the date of expiry of the current registration period⁶. Notwithstanding this, an application for renewal may be made prior to the last three months of the current registration (or issue of a renewal notice), for issue of a certificate of registry⁷ commencing prior to the expiry of the current registration period⁸. Where such a certificate is issued, it is not valid for a period greater than five years commencing on that date of issue and the previous certificate then ceases to be valid⁹.

1 As to the registration period see PARA 296.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 As to the meaning of 'registrar' see PARA 255 note 2.

4 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 41(1) (reg 41 substituted by SI 1998/2976).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 41(2) (as substituted: see note 5).

7 As to the meaning of 'certificate of registry' see PARA 255 note 17. As to the issue of duplicate certificates of registry in certain circumstances see PARA 373.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 41(3) (as substituted: see note 5).

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 41(3) (as substituted: see note 5).

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305. Application for renewal of registration.

Application for renewal of a ship's registration¹ must be in a form approved by the Secretary of State² and must be accompanied by³:

- 586 (1) a declaration of eligibility⁴; and
- 587 (2) a declaration that there have been no changes to any registered details of the ship that have not been notified to the registrar⁵.

In respect of certain fishing vessels⁶, there must also be a declaration that the fishing vessel is correctly measured for tonnage under the tonnage regulations⁷; and, in the case of an application for renewal in respect of a fishing vessel, the application must in addition be accompanied by⁸: (a) where an engine has been permanently de-rated⁹, a declaration describing the method by which the engine has been permanently de-rated¹⁰; or (b) in any other case, a declaration that the engine power recorded is the maximum continuous engine power¹¹.

Where no application for renewal is made, the registrar must notify each and every mortgagee of the expiration of the ship's registration¹².

1 As to the registration period see PARA 296; and as to the issue of a renewal notice see PARA 304. As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the Secretary of State see PARA 38.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 42(1). As to the requirement to supply supplementary information or evidence where that provided on an application for registration is judged to be either not correct or insufficient see PARA 372.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 42(1)(a). As to the meaning of 'declaration of eligibility' see PARA 272 note 2. As to the power to dispense with declarations or other evidence otherwise required under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, see PARA 371.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 42(1)(b). As to the meaning of 'registrar' see PARA 255 note 2. As to the requirement to remeasure tonnage in certain circumstances before a ship's registration can be renewed see PARA 380.

6 In respect of all fishing vessels except those below 24 metres in length to which the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510, Pt IIA (regs 12A-12E) (measurement of smaller fishing vessels) (see PARA 248) does not apply: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 42(1)(c) (added by SI 1998/1915). 'Length' in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 42 has the same meaning as in the tonnage regulations: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2) (definition added by SI 1998/1915). As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 42(1)(c) (as added: see note 6). As to the meaning of 'tonnage regulations' see PARA 276 note 2.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 42(1A) (added by SI 1999/3206).

9 As to the meaning of 'permanently de-rated engine power' see PARA 275 note 15.

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 42(1A)(a) (as added: see note 8).

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 42(1A)(b) (as added: see note 8). As to the meaning of 'maximum continuous engine power' see PARA 275 note 14.

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 42(2).

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I. TRANSFERS ETC OF REGISTERED SHIPS

306. In general.

Any transfer of a registered ship¹, or a share in such a ship, must be effected by a bill of sale satisfying the prescribed² requirements, unless the transfer will result in the ship ceasing to have a British connection³. Where any such ship or share has been so transferred, the transferee must not be registered as owner of the ship or share unless:

- 588 (1) he has made the prescribed application to the registrar⁴; and
- 589 (2) the registrar is satisfied that the ship retains a British connection and that he would not refuse to register the ship⁵.

If such an application is granted by the registrar, the registrar must register the bill of sale in the prescribed manner⁶. Bills of sale must be registered in the order in which they are produced to the registrar for the purposes of registration⁷.

Where a registered ship, or a share in a registered ship, is transmitted to any person by any lawful means other than a transfer by way of bill of sale⁸ and the ship continues to have a British connection, that person may not be registered as owner of the ship or share unless⁹:

- 590 (a) he has made the prescribed application to the registrar¹⁰; and
- 591 (b) the registrar is satisfied that the ship retains a British connection and that he would not refuse to register the ship¹¹.

If such an application is granted by the registrar, the registrar must cause the applicant's name to be registered as owner of the ship or share¹².

Where the property in a registered ship or share in a registered ship is transmitted to any person by any lawful means other than a transfer by way of bill of sale¹³, but as a result the ship no longer has a British connection, the High Court may, on application by or on behalf of that person, order a sale of the property so transmitted and direct that the proceeds of sale, after deducting the expenses of the sale, are to be paid to that person or otherwise as the court directs¹⁴. The court may require any evidence in support of the application it thinks requisite, and may make the order on any terms and conditions it thinks just, or may refuse to make the order, and generally may act in the case as the justice of the case requires¹⁵. Every such application must be made within the period of 28 days beginning with the date of the occurrence of the event on which the transmission has taken place, or within such further time, not exceeding one year, as the court may allow¹⁶. If such an application is not made within the time so allowed¹⁷, or if the court refuses an order for sale¹⁸, the ship or share transmitted is liable to forfeiture¹⁹.

Where any court²⁰ orders the sale of any registered ship or share in a registered ship, the order of the court must contain a declaration vesting in some named person the right to transfer the ship or share²¹. The person so named is entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner of the ship or share²². The registrar must deal with any application relating to the transfer of the ship or share made by the person so named as if that person were the registered owner²³.

The High Court may, if it thinks fit (without prejudice to the exercise of any other power), on the application of any interested person, make an order prohibiting for a specified time any dealing with a registered ship or share in a registered ship²⁴. The court may make the order on any terms or conditions it thinks just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires²⁵. The order, when a copy is served on the registrar, is binding on him, whether or not he was made a party to the proceedings²⁶.

Where the transfer of a vessel (whether British or not) is a sham, the original owner will retain beneficial ownership²⁷.

1 As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229. As to the general private law powers of the registered owner of a ship see PARA 237.

2 For these purposes, 'prescribed' means prescribed in registration regulations: Merchant Shipping Act 1995 s 16(1), Sch 1 para 14. As to the meaning of 'registration regulations' see PARA 247.

3 Merchant Shipping Act 1995 Sch 1 para 2(1). As to the meaning of references to a ship's having a British connection see PARA 245 note 3. As to the form of the bill of sale see PARA 308; and as to the application of Sch 1 see PARA 252.

4 Merchant Shipping Act 1995 Sch 1 para 2(2)(a). As to the meaning of 'registrar' for these purposes see PARA 254 note 11.

5 Merchant Shipping Act 1995 Sch 1 para 2(2)(b).

6 Merchant Shipping Act 1995 Sch 1 para 2(3).

7 Merchant Shipping Act 1995 Sch 1 para 2(4).

8 Ie other than by a transfer under the Merchant Shipping Act 1995 Sch 1 para 2 (as to which see the text and notes 1-7): see Sch 1 para 3(1).

9 Merchant Shipping Act 1995 Sch 1 para 3(1).

10 Merchant Shipping Act 1995 Sch 1 para 3(1)(a).

11 Merchant Shipping Act 1995 Sch 1 para 3(1)(b).

12 Merchant Shipping Act 1995 Sch 1 para 3(2).

13 Ie other than by a transfer under the Merchant Shipping Act 1995 Sch 1 para 2 (as to which see the text and notes 1-7): see Sch 1 para 4(1).

14 Merchant Shipping Act 1995 Sch 1 para 4(1).

15 Merchant Shipping Act 1995 Sch 1 para 4(2).

16 Merchant Shipping Act 1995 Sch 1 para 4(3).

17 Merchant Shipping Act 1995 Sch 1 para 4(4)(a).

18 Merchant Shipping Act 1995 Sch 1 para 4(4)(b).

19 Merchant Shipping Act 1995 Sch 1 para 4(4).

20 Ie whether under the Merchant Shipping Act 1995 Sch 1 para 4 (as to which see the text and notes 13-19) or otherwise: see Sch 1 para 5(1).

21 Merchant Shipping Act 1995 Sch 1 para 5(1).

22 Merchant Shipping Act 1995 Sch 1 para 5(2).

23 Merchant Shipping Act 1995 Sch 1 para 5(3).

- 24 Merchant Shipping Act 1995 Sch 1 para 6(1).
- 25 Merchant Shipping Act 1995 Sch 1 para 6(2).
- 26 Merchant Shipping Act 1995 Sch 1 para 6(3).
- 27 *The Tjaskemolen (now named Visvliet)* [1997] 2 Lloyd's Rep 465.

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307. Evidence of title on registration of transfer of ship by way of bill of sale.

On application for registration¹ of a transfer of a registered ship² (or a share in a registered ship) by way of bill of sale, other than a fishing vessel³ registered with simple registration⁴, the bill of sale must be produced to the registrar⁵.

When an application is made for the registration of a transfer of a fishing vessel which is registered with simple registration, evidence of the transfer satisfactory to the registrar must be produced to him⁶.

1 On an application under the Merchant Shipping Act 1995 s 16(1), Sch 1 para 2(1) (see PARA 306): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 43(1); Interpretation Act 1978 s 17(2)(b). As to the meaning of 'application for registration' see PARA 269 note 1.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

4 As to the meaning of 'simple registration' see PARA 256.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 43(1); Interpretation Act 1978 s 17(2)(b). As to the meaning of 'registrar' see PARA 255 note 2. As to the form of the bill of sale see PARA 308; and as to registration of a transfer see PARA 309.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 43(2).

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308. Form of bill of sale.

Every bill of sale effecting a transfer of a registered ship or a share in a ship¹ must be in the form approved by the Secretary of State² with appropriate attestation³ and must contain a description of the ship sufficient to identify it⁴.

1 le under the Merchant Shipping Act 1995 (see PARA 306) and the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 44. As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the Secretary of State see PARA 38.

3 For these purposes, 'appropriate attestation' means attestation in a form approved by the Secretary of State: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2).

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 44; Interpretation Act 1978 s 17(2)(b).

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309. Registration of transfer of a ship by way of bill of sale.

If the application for the transfer of a ship¹ (or of shares in a ship) by way of bill of sale² is granted by the registrar³, he must⁴:

- 592 (1) register the bill of sale by entering the name of the new owner⁵ in the register⁶ as owner of the ship or share in question⁷; and
- 593 (2) endorse on the bill of sale the fact that the entry has been made, together with the date and time when it was made⁸.

If the registrar is satisfied with the evidence that the ship or share in the ship has been transferred⁹, he must enter the name of the new owner in the register as the owner of the ship or share in question and issue a new certificate, which is valid for a period of five years¹⁰.

1 For these purposes, 'transfer of a ship' includes, except where the context otherwise requires, transfer of a share in a ship: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2). As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 I.e. under the Merchant Shipping Act 1995 s 16(1), Sch 1 para 2(2) (see PARA 306): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 45(1); Interpretation Act 1978 s 17(2)(b). As to the bill of sale see PARA 308.

3 As to the meaning of 'registrar' see PARA 255 note 2.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 45(1); Interpretation Act 1978 s 17(2)(b).

5 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

6 As to the meaning of 'register' see PARA 255 note 1.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 45(1)(a).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 45(1)(b).

9 I.e. the evidence under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 43 (see PARA 307): see reg 45(2).

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 45(2). As to the meaning of 'certificate of registry' see PARA 255 note 17. As to the issue of duplicate certificates of registry in certain circumstances see PARA 373.

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310. Evidence of title on registration of ship transmitted other than by way of bill of sale.

An application for registration¹ of a transmission of a registered ship² (or a share in a registered ship) other than by way of bill of sale³ must be made in the form approved by the Secretary of State⁴.

The following evidence must be produced to the registrar⁵ on an application for a transfer of a registered ship or share therein by way of transmission⁶:

- 594 (1) if the transmission was consequent on death, the grant of representation⁷ or an office copy thereof or of an extract therefrom⁸;
- 595 (2) if the transmission was consequent on bankruptcy, such evidence as is for the time being receivable in courts of justice as proof of title of persons claiming under bankruptcy⁹;
- 596 (3) if the transmission was consequent on an order of the court, a copy of the order or judgment of that court¹⁰.

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 le under the Merchant Shipping Act 1995 s 16(1), Sch 1 para 3(1) (see PARA 306): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 46(1); Interpretation Act 1978 s 17(2)(b). As to the bill of sale see PARA 308.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 46(1); Interpretation Act 1978 s 17(2)(b). As to the Secretary of State see PARA 38.

5 As to the meaning of 'registrar' see PARA 255 note 2.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 46(2).

7 For these purposes, 'representation' means probate, administration, confirmation, or other instrument constituting a person the executor, administrator or other legal representative of a deceased person, including a certificate of confirmation relating to a vessel: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 46(2)(a).

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 46(2)(b).

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 46(2)(c).

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311. Declaration of eligibility on transfer or transmission.

Every application for the registration¹ of a transfer or transmission of a registered ship² must be accompanied by a declaration of eligibility³ and, where the application is made on behalf of a body corporate, by the document or documents required for such applications⁴.

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 As to an application for the transfer of a registered ship (or shares therein) see the Merchant Shipping Act 1995 s 16(1), Sch 1 para 2; and PARA 306. As to an application for the transmission of a registered ship (or shares therein) see Sch 1 para 3; and PARA 306. As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 As to the meaning of 'declaration of eligibility' see PARA 272 note 2. As to the power to dispense with declarations or other evidence otherwise required under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, see PARA 371.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 47. The document (or documents) so required is (or are) that (or those) mentioned in reg 24 (see PARA 273) (applications by bodies corporate): see reg 47.

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312. Refusal of registration of transfer or transmission.

If, on an application for transfer or transmission of a ship (or shares) in a ship¹, the registrar² is not satisfied that the ship is eligible to be registered, then³:

- 597 (1) the registrar must serve a notice on the owner⁴ of the ship⁵ stating: (a) that the registrar is not satisfied that the vessel in question is eligible to be registered⁶; and (b) that the ship's registration will accordingly terminate at the end of the period mentioned in head (2) below⁷; and
- 598 (2) the ship's registration terminates at the end of the period of 14 days beginning with the date of the service of that notice⁸.

1 As to an application for the transfer of a registered ship (or shares therein) see the Merchant Shipping Act 1995 s 16(1), Sch 1 para 2; and PARA 306. As to an application for the transmission of a registered ship (or shares therein) see Sch 1 para 3; and PARA 306. As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the meaning of 'registrar' see PARA 255 note 2.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 48(1).

4 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 48(1)(a).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 48(1)(a), (2)(a).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 48(1)(a), (2)(b).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 48(1)(b).

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J. NOTIFICATION OF CHANGES

313. Notification of changes of ownership etc.

If at any time there occurs, in relation to a registered ship¹:

- 599 (1) any change affecting the eligibility of the ship to be registered, not being a change which affects the qualification or eligibility of the owner² or the British connection of a ship³; or
- 600 (2) in respect of a fishing vessel⁴, any change, not affecting that eligibility, in the percentage of the property in the ship beneficially owned⁵ by qualified persons or companies⁶,

the owner of the ship must, as soon as practicable after the change occurs, notify the registrar⁷. Such notification must be made in writing, must be signed by the owner and must specify the nature of the change and the name and the official number of the ship⁸. Any person who contravenes the requirement to notify the registrar of such changes as are mentioned in heads (1) and (2) above is guilty of an offence⁹.

Where there is any transfer or transmission of a registered ship or share in a registered ship¹⁰:

- 601 (a) the person ceasing to own the ship or share (or in the event of his death, his legal personal representative) must notify the registrar and surrender the certificate of registry¹¹; and
- 602 (b) the registrar must cancel the certificate of registry and must freeze¹² the register pending the application for the registration of the transfer or transmission by the new owner or owners of the ship or share¹³.

Where there is a transfer of a registered ship, the new owners must within 30 days of the transfer make application¹⁴ for the transfer to be registered¹⁵. If the transfer is of all the shares in the ship, and application is not made within the 30 days, the registrar may cancel the registration of the ship and the certificate of registry¹⁶. If the transfer is of one or some of the shares in the ship, and application is not made within the 30 days, the registrar must serve a notice on the remaining registered owners notifying them that, unless an application to transfer the share or shares in question is made within 30 days of the date of the notice, the registration of the ship and the certificate of registry may be cancelled¹⁷.

Where there is a transmission of a registered ship, the new owners must promptly make application¹⁸ for the transmission to be registered¹⁹. If the transmission is all the shares in the ship, and application is not made within a reasonable time, the registrar may cancel the registration of the ship and the certificate of registry²⁰. If the transmission is of one or some of the shares in the ship, and application is not made within a reasonable time, the registrar must serve a notice on the remaining registered owners notifying them that, unless an application to register the transmission of the share or shares in question is made within 30 days of the date of the notice, the registration of the ship and the certificate of registry may be cancelled²¹.

Any person who fails to so notify the registrar, to so surrender the certificate of registry, or to make the required applications²² in relation to the transfer or transmission of a registered ship (or share therein) is guilty of an offence²³.

Where such an application is made²⁴ to register a change of ownership of a registered fishing vessel (or share in such vessel)²⁵, the applicant must submit details of the maximum continuous engine power²⁶ and, where an engine is permanently de-rated²⁷, the modification explanation²⁸. Any owner who contravenes this requirement is guilty of an offence²⁹.

1 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 49(1). As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 I.e. as prescribed in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7 (qualification) (see PARA 258) and reg 12 (eligibility) (see PARA 262): see reg 49(1)(a) (amended by SI 1994/541). As to the meaning of 'owner' for these purposes see PARA 255 note 13.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 49(1)(a) (as amended: see note 2). The text refers to changes affecting the British connection of a ship as prescribed in reg 8 (British connection and majority interest in the ship) (see PARA 259) and reg 14 (British connection and representative persons for fishing vessels) (see PARA 263): see reg 49(1)(a) (as so amended). As to the meaning of references under the Merchant Shipping Act 1995 to a ship's having a British connection see PARA 245 note 3. As to the requirement to remeasure tonnage in certain circumstances where a ship's details have been changed see PARA 380.

4 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

5 As to the meaning of 'beneficial ownership' for these purposes see PARA 262 note 15.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 49(1)(b).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 49(1). As to the meaning of 'registrar' see PARA 255 note 2.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 49(2). As to a ship's name see PARAS 277, 278; and as to the allocation of a ship's official number see PARA 279.

9 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 49(3); and PARA 1119.

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50(1). As to an application for the transfer of a registered ship (or shares therein) see the Merchant Shipping Act 1995 s 16(1), Sch 1 para 2; and PARA 306. As to an application for the transmission of a registered ship (or shares therein) see Sch 1 para 3; and PARA 306.

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50(1)(a). As to the meaning of 'certificate of registry' see PARA 255 note 17.

12 For these purposes, 'freeze' means to prevent any entry, which includes a deletion of an entry, being made in the register: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2). As to the meaning of 'register' see PARA 255 note 1.

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50(1)(b).

14 I.e. in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 50(2)(a).

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50(2)(a).

16 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50(2)(b).

17 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50(2)(c).

18 I.e. in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 50(3)(a).

19 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50(3)(a).

- 20 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50(3)(b).
- 21 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50(3)(c).
- 22 le as required by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50(1), (2) or (3) (see the text and notes 10-21): see reg 50(4); and PARA 1119.
- 23 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50(4); and PARA 1119.
- 24 le under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50 (see the text and notes 10-21): see reg 29A(1)(c) (regs 29A, 29B added by SI 1999/3206).
- 25 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(1)(c) (as added: see note 24).
- 26 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(2)(a) (as added: see note 24). The text refers to details of the maximum continuous engine power, determined in accordance with EC Council Regulation 2930/86 of 22 September 1986 defining characteristics for fishing vessels (OJ L274, 25.9.1986, p 1) art 5: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(2)(a) (as so added). As to the meaning of 'maximum continuous engine power' see PARA 275 note 14. Where the registrar is not satisfied that the engine power details notified to him, or recorded, for any fishing vessel are correct, he may require the owner to have the engine power measured in accordance with EC Council Regulation 2930/86 of 22 September 1986 defining characteristics for fishing vessels (OJ L274, 25.9.1986, p 1) art 5: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29B (as so added).
- 27 As to the meaning of 'permanently de-rated engine power' see PARA 275 note 15.
- 28 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(2)(b) (as added: see note 24). As to the meaning of 'modification explanation' see PARA 275 note 15.
- 29 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(3); and PARA 1118.

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314. Change in registered particulars of ship.

Where there is a change:

- 603 (1) in the registered particulars of a ship¹ (other than a change in the tonnage of the ship)²; or
- 604 (2) in the name or address of an owner³ entered in the register⁴ (not being a change of ownership)⁵,

application must be made as soon as practicable to the registrar⁶ for the change to be recorded in the register⁷. Such application must be in writing and must be accompanied⁸ by the certificate of registry⁹ and such evidence as to the change as may be required by the registrar¹⁰.

Where there is a change in the tonnage of a ship, it must be¹¹ resurveyed or remeasured¹². Thereafter application in a form approved by the Secretary of State¹³ must be made as soon as practicable for the change to be recorded in the register¹⁴. The application must be accompanied by the certificate of survey or measurement and the certificate of registry¹⁵.

On recording the change in the registered particulars, the registrar must cancel the existing certificate and issue to the owner a new certificate of registry expiring on the same date as the existing one¹⁶.

Where such an application is made¹⁷ to record a change in the length, breadth or engine power of a registered fishing vessel¹⁸, the applicant must submit details of the maximum continuous engine power¹⁹ and, where an engine is permanently de-rated²⁰, the modification explanation²¹. Any owner who contravenes this requirement is guilty of an offence²².

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51(1)(a).

3 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

4 As to the meaning of 'register' see PARA 255 note 1.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51(1)(b).

6 As to the meaning of 'registrar' see PARA 255 note 2.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51(1). Any person who fails to make such an application is guilty of an offence: see reg 51(5); and PARA 1119.

8 Ie subject to the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 111 (dispensing with production of certificate) (see PARA 376): see reg 51(2).

9 As to the meaning of 'certificate of registry' see PARA 255 note 17. As to the power to dispense with the production of a certificate in certain circumstances see PARA 376.

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51(2).

11 le in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29 (see PARA 276): see reg 51(3). As to the requirement to remeasure tonnage in certain circumstances see PARA 380.

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51(3).

13 As to the Secretary of State see PARA 38.

14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51(3). Any person who fails to make such an application is guilty of an offence: see reg 51(5); and PARA 1119.

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51(3). As to the survey and measurement of ships, including the ascertainment and certification of tonnage for registration purposes, see PARA 276.

16 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51(4).

17 le under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51 (see the text and notes 1-16): see reg 29A(1)(b) (regs 29A, 29B added by SI 1999/3206).

18 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(1)(b) (as added: see note 17). As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

19 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(2)(a) (as added: see note 17). The text refers to details of the maximum continuous engine power, determined in accordance with EC Council Regulation 2930/86 of 22 September 1986 defining characteristics for fishing vessels (OJ L274, 25.9.1986, p 1) art 5: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(2)(a) (as so added). As to the meaning of 'maximum continuous engine power' see PARA 275 note 14. Where the registrar is not satisfied that the engine power details notified to him, or recorded, for any fishing vessel are correct, he may require the owner to have the engine power measured in accordance with EC Council Regulation 2930/86 of 22 September 1986 defining characteristics for fishing vessels (OJ L274, 25.9.1986, p 1) art 5: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29B (as so added).

20 As to the meaning of 'permanently de-rated engine power' see PARA 275 note 15.

21 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(2)(b) (as added: see note 17). As to the meaning of 'modification explanation' see PARA 275 note 15.

22 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(3); and PARA 1118.

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K. CHANGE OF NAME; TRANSFER OF PORT OF CHOICE

315. Change of name.

An owner¹ of a registered ship² may apply to the registrar³ to change the name of the ship⁴. The application must be made in a form approved by the Secretary of State⁵ and must be accompanied⁶ by the certificate of registry⁷. If it appears to the registrar that the name complies with the requirements relating to the approval of names⁸, he must issue a marking note to the owner⁹.

On receipt of the marking note, the owner must cause the ship to be marked with the new name and, in respect of ships over 24 metres and fishing vessels¹⁰, must cause the marking to be duly¹¹ inspected¹². The owner or inspector¹³ must, if satisfied that the ship is marked in the prescribed manner¹⁴, complete the marking note and return it to the registrar¹⁵.

On receipt of the marking note duly completed, the registrar must re-register the ship with its new name and must cancel the existing certificate and must issue to the owner a new certificate of registry expiring on the same date as the existing one¹⁶.

1 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 As to the meaning of 'registrar' see PARA 255 note 2.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 52(1).

5 As to the Secretary of State see PARA 38.

6 I.e. subject to the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 111 (dispensing with production of certificate) (see PARA 376): see reg 52(1).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 52(1). As to the meaning of 'certificate of registry' see PARA 255 note 17. As to the power to dispense with the production of a certificate in certain circumstances see PARA 376.

8 I.e. the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 52(2), Sch 1 (as to which see PARA 278): see reg 52(2).

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 52(2).

10 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

11 I.e. inspected in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 33 (see PARA 286): see reg 54(1).

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 54(1).

13 As to the meaning of 'inspector of marks' see PARA 280 note 8.

14 I.e. in the manner required by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 54(2), Sch 3 (see PARA 281 et seq): see reg 54(2).

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 54(2).

- 16 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 55.

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316. Transfer of port of choice.

An owner¹ of a registered ship² may apply to the registrar³ for the ship to change its port of choice⁴ to another such port⁵. The application must be made in a form approved by the Secretary of State⁶ and must be accompanied⁷ by its certificate of registry⁸.

On receipt of such an application in respect of a fishing vessel⁹, the registrar must allocate to the vessel port letters¹⁰ and numbers¹¹ for that port¹². If it appears to the registrar that the requirements relating to the approval of names¹³ are complied with, he must issue a marking note¹⁴.

On receipt of the marking note, the owner must cause the ship to be marked with the new port of choice and, in respect of ships over 24 metres and fishing vessels, must cause the marking to be duly¹⁵ inspected¹⁶. The owner or inspector¹⁷ must, if satisfied that the ship is marked in the prescribed manner¹⁸, complete the marking note and return it to the registrar¹⁹.

On receipt of the marking note duly completed, the registrar must re-register the ship with its new port of choice and must cancel the existing certificate and must issue to the owner a new certificate of registry expiring on the same date as the existing one²⁰.

1 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 As to the meaning of 'registrar' see PARA 255 note 2.

4 As to the meaning of 'port of choice' see PARA 278 note 12. As to the allocation of port of choice see PARA 279.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 53(1).

6 As to the Secretary of State see PARA 38.

7 Ie subject to the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 111 (dispensing with production of certificate) (see PARA 376): see reg 53(1).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 53(1). As to the meaning of 'certificate of registry' see PARA 255 note 17. As to the power to dispense with the production of a certificate in certain circumstances see PARA 376.

9 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

10 As to the meaning of 'port letters' see PARA 279 note 3.

11 As to the meaning of 'port number' see PARA 279 note 8.

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 53(2).

13 Ie the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 52(2), Sch 1 (as to which see PARA 278): see reg 53(3).

14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 53(3).

15 Ie inspected in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 33 (see PARA 286): see reg 54(1).

- 16 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 54(1).
- 17 As to the meaning of 'inspector of marks' see PARA 280 note 8.
- 18 le in the manner required by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 54(2), Sch 3 (see PARA 281 et seq): see reg 54(2).
- 19 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 54(2).
- 20 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 55.

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L. TERMINATION OF SHIP'S REGISTRATION

317. Removal from the register.

The registrar¹ may² terminate a ship's³ registration in the following circumstances⁴:

- 605 (1) on application by the owner⁵;
- 606 (2) if the registered owner has not notified the registrar that ownership of the ship has changed⁶;
- 607 (3) on the ship no longer being eligible to be registered⁷;
- 608 (4) on the ship being destroyed (which includes, but is not limited to, shipwreck, demolition, fire and sinking)⁸;
- 609 (5) if, taking into account any requirements of the Merchant Shipping Act 1995, including any instrument made thereunder, relating to the condition of the ship or its equipment so far as relevant to its safety or to any risk of pollution or to the safety, health and welfare of persons employed or engaged in any capacity on board the ship, he considers that it would be inappropriate for the ship to remain registered⁹;
- 610 (6) when a registered fishing vessel¹⁰ which has been licensed to fish ceases to be so licensed for a continuous period of six months or more¹¹;
- 611 (7) when a fishing vessel which requires a licence to fish but at the time of registration did not have such a licence and has not acquired such a licence within six months of the issue of its certificate of registry¹²;
- 612 (8) when any penalty imposed on the owner of a ship in respect of a contravention¹³ of the Merchant Shipping Act 1995, or of any instrument in force thereunder, has remained unpaid for a period of more than three months, and no appeal against that penalty is pending¹⁴;
- 613 (9) when any summons for any such contravention has been duly served on the owner of a ship but the owner has failed to appear at the time and place appointed for the trial of the information or complaint in question and a period of not less than three months has elapsed since that time¹⁵;
- 614 (10) when the tonnage of certain fishing vessels¹⁶ has not been duly measured¹⁷ (or though so measured, that information has not been notified to the registrar)¹⁸;
- 615 (11) where the owner of a fishing vessel fails to respond to the registrar within 15 days of a request from him to supply information concerning details on the register¹⁹ of a fishing vessel²⁰;
- 616 (12) where the owner of a fishing vessel supplies information requested by the registrar, but that information is either false or incorrect, or is reasonably considered by the registrar to be insufficient²¹;
- 617 (13) where a fishing vessel certificate²² has expired²³;
- 618 (14) where²⁴ a person is required to notify the registrar of any transfer or transmission of a registered ship or share in a registered ship (or to make an application to do so) and has not done so²⁵; or
- 619 (15) where²⁶ a person is required to make an application for any change in the registered particulars of a ship or in the name or address of an owner to be recorded in the register, and has not done so²⁷.

Where it appears to the registrar that head (2) or head (3) above, or any of heads (5) to (15) above, applies, he may serve notice on the owner or managing owner²⁸, or on any charterer, manager or operator of the ship requiring him to produce, within 30 days, evidence (which may include a declaration of British connection²⁹) sufficient to satisfy him that the ship is eligible to remain on the register³⁰. If, at the expiry of that period of 30 days, the registrar is not so satisfied, he may either: (a) extend the notice and ask for further information or evidence³¹; or (b) serve a final notice which closes the ship's registration, such closure to take effect seven days after the service of that notice³². Where a ship's registration is so terminated, the registrar must issue a closure transcript³³ and the owner of the ship must forthwith surrender its certificate of registry³⁴.

Where the registrar terminates registration under head (1) or (4) above, he must forthwith issue a closure transcript to the owner of the ship and notify any mortgagees of the closure of the registration³⁵. The registrar must issue a closure transcript also when he terminates registration under head (10) above³⁶. On receipt of the closure transcript, the owner must immediately surrender the ship's certificate of registry to the registrar for cancellation³⁷.

Where the registration of a fishing vessel has been terminated by virtue of head (3) above, the ship may not again be registered³⁸ as a British ship³⁹ unless⁴⁰: (i) the registrar consents to the vessel being so registered⁴¹; or (ii) the registrar is satisfied that the vessel has been disposed of by its former registered owner by means of a transaction at arm's length and that no person who for the time being is a relevant owner⁴² of the vessel was a relevant owner of it at the time registration was terminated⁴³.

1 As to the meaning of 'registrar' see PARA 255 note 2.

2 le subject to the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 101 (service of notices) (see the text and notes 28-34): see reg 56(1).

3 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(a). As to the meaning of 'owner' for these purposes see PARA 255 note 13.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(aa) (added by SI 1998/2976).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(b).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(c).

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(d); Interpretation Act 1978 s 17(2)(b).

10 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(e).

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(f). As to the meaning of 'certificate of registry' see PARA 255 note 17.

13 As to the meaning of 'contravention' see PARA 50 note 3.

14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(g); Interpretation Act 1978 s 17(2)(b).

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(h).

16 le except in the case of a fishing vessel below 24 metres in length to which the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510, Pt IIA (regs 12A-12E) (measurement of smaller fishing vessels) (see PARA 248) does not apply: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138,

reg 56(1)(i) (added by SI 1998/1915). 'Length' in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56, except in reg 56(4)(b) (see head (ii) in the text), has the same meaning as in the tonnage regulations: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2) (definition added by SI 1998/1915).

17 It is not measured in accordance with the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510 (see PARA 248): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(i) (as added: see note 16).

18 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(i) (as added: see note 16).

19 As to the meaning of 'register' see PARA 255 note 1.

20 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(j) (reg 56(1)(j)-(n) added by SI 1999/3206).

21 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(k) (as added: see note 20).

22 For these purposes, 'fishing vessel certificate' means a certificate of that name specified in the Merchant Shipping Act 1995 s 123 (as to which see PARA 606): Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2) (definition added by SI 1999/3206).

23 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(l) (as added: see note 20).

24 It is under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50 (as to which see PARA 313): see reg 56(1)(m) (as added: see note 20).

25 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(m) (as added: see note 20).

26 It is under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51 (as to which see PARA 314): see reg 56(1)(n) (as added: see note 20).

27 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(1)(n) (as added: see note 20).

28 Where the registrar serves a notice under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 101 on the owner of a vessel in respect of which a mortgage is registered, the registrar must send a copy of that notice to the mortgagee at the address recorded for him in the register: reg 102.

The term 'managing owner' is used in reg 23 (appointment of managing owner where ship has more than one owner) (as to which see PARA 271), as well as in reg 34, but it is not defined; however, see PARA 238.

29 As to the meaning of 'declaration of British connection' under the Merchant Shipping Act 1995 see PARA 245 note 3. As to the power to dispense with declarations or other evidence otherwise required under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, see PARA 371.

30 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 101(1) (amended by SI 1998/2976; SI 1999/3206).

31 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 101(2)(a).

32 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 101(2)(b).

33 For these purposes, 'closure transcript' means a certified extract from the register showing that the entry in the register in respect of a ship has been closed, the date of its closure, and the details about the ship and its ownership at the time of closure: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 1(2).

34 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 101(3).

35 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(2).

36 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(2A) (added by SI 1998/1915). In the case of fishing vessels of 24 metres or more in length, the closure transcript mentioned in the text has effect on or, as the case may be, after 1 January 1999; and, in the case of fishing vessels to which

the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510, Pt IIA (see PARA 248) applies, it has effect on or, as the case may be, after the date on which Pt IIA applies to them: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(2A) (as so added).

37 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(3).

38 le without prejudice to the operation of any provision of the Merchant Shipping Act 1995 or the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 56(4); Interpretation Act 1978 s 17(2) (b).

39 As to the meaning of 'British ship' under the Merchant Shipping Act 1995 see PARA 230.

40 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(4).

41 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(4)(a).

42 For these purposes, a person is a relevant owner of a vessel at any time if at that time (Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(5)):

68 (1) the legal title to the vessel or any share in it is vested in that person (reg 56(5)(a)); or

69 (2) the vessel or any share in it is beneficially owned by that person (reg 56(5)(b)); or

70 (3) any share in a body corporate falling within head (1) or head (2) is legally or beneficially owned by that person (reg 56(5)(c)),

whether vested in or, as the case may be, owned by, that person alone or together with any other person or persons (reg 56(5)). As to the meaning of 'beneficial ownership' for these purposes see PARA 262 note 15.

43 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 56(4)(b).

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(vii) Mortgages

A. CREATION OF MORTGAGES

318. Mortgages of registered ships.

A registered ship¹ (or share in a registered ship) may be made a security for the repayment of a loan or the discharge of any other obligation².

The instrument creating any such security (a 'mortgage') must be in the form prescribed by or approved under registration regulations³. Where a mortgage executed in this way is produced to the registrar⁴, he must register the mortgage in the prescribed manner⁵.

Mortgages must be registered in the order in which they are produced to the registrar for the purposes of registration⁶.

1 As to the meaning of 'ship' see PARA 229.

2 Merchant Shipping Act 1995 s 16(1), Sch 1 para 7(1). As to the application of Sch 1 see PARA 252.

3 Merchant Shipping Act 1995 Sch 1 para 7(2). As to the meaning of 'registration regulations' see PARA 247. Accordingly, for the purposes of Sch 1, 'mortgage' must be construed in accordance with Sch 1 para 7(2): Sch 1 para 14. As to the prescribed form of mortgage see PARA 319. As to mortgaged vessels generally see **MORTGAGE** vol 77 (2010) PARA 101 et seq.

4 As to the meaning of 'registrar' for these purposes see PARA 254 note 11.

5 Merchant Shipping Act 1995 Sch 1 para 7(3). For these purposes, 'registered mortgage' means a mortgage registered under Sch 1 para 7(3): Sch 1 para 14. As to the prescribed manner of the registration of mortgages see PARA 320.

6 Merchant Shipping Act 1995 Sch 1 para 7(4). In addition, a charge on a ship or any share in a ship must be registered under the Companies Act 1985 s 396(1)(h) (prospectively repealed): see **COMPANIES** vol 15 (2009) PARA 1279. As to priority of registered mortgages see also PARAS 321-322.

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319. Form of mortgage.

A mortgage¹ produced for registration under the Merchant Shipping Act 1995², a transfer of a registered mortgage³ and a discharge of a registered mortgage⁴, must be in a form approved by the Secretary of State⁵, in each case with appropriate attestation⁶.

1 As to the meaning of 'mortgage' for the purposes of the Merchant Shipping Act 1995 see PARA 318 note 3.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 57(a); Interpretation Act 1978 s 17(2)(b). The text refers to the registration of mortgages of registered ships under the Merchant Shipping Act 1995 Sch 1 (as to which see PARA 318): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 57(a); Interpretation Act 1978 s 17(2)(b).

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 57(b). As to the meaning of 'registered mortgage' for the purposes of the Merchant Shipping Act 1995 see PARA 318 note 5.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 57(c).

5 As to the Secretary of State see PARA 38.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 57 (amended by SI 1994/541). As to the meaning of 'appropriate attestation' see PARA 308 note 3.

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320. Registration of mortgage.

Where a mortgage on a ship¹ duly executed² is produced to the registrar³ for registration, he must register the mortgage and endorse on it the date and time it was registered⁴.

1 As to the meaning of 'mortgage' for the purposes of the Merchant Shipping Act 1995 see PARA 318 note 3. As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 I.e. executed in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 57 (as to which see PARA 319): see reg 58.

3 As to the meaning of 'registrar' see PARA 255 note 2.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 58. In addition, a charge on a ship or any share in a ship must be registered under the Companies Act 1985 s 396(1)(h) (prospectively repealed): see **COMPANIES** vol 15 (2009) PARA 1279. As to priority of registered mortgages see also PARAS 321, 322.

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321. Priority of registered mortgages.

The rights of unregistered mortgagees are postponed to those of registered mortgagees, even though the date of the unregistered mortgage is antecedent to that of the registered mortgage¹, and even though the existence of the unregistered mortgage was known to the registered mortgagee when he took his mortgage². The rights of the unregistered mortgagee are also postponed to those of a purchaser in good faith for value without notice from the legal owner³, and to those of all persons with prior equities⁴.

Where, under the Merchant Shipping Act 1995, two or more mortgages⁵ are registered in respect of the same ship⁶ or share, the priority of the mortgagees between themselves must be determined by the order in which the mortgages were registered, and not by reference to any other matter⁷. Where two or more mortgagees are registered in respect of the same ship or share, a subsequent mortgagee may not, except under an order of a court of competent jurisdiction, sell the ship without the concurrence of every prior mortgagee⁸. Registration regulations⁹ may, however, provide for the giving to the registrar by intending mortgagees of 'priority notices' in a form prescribed by or approved under the regulations which, when recorded in the register¹⁰, determine the priority of the interest to which the notice relates¹¹.

A mortgagee of a ship or share¹² has priority over the judgment creditors of the mortgagor¹³, even though such creditors have a right in rem¹⁴. A registered mortgagee is entitled to the possession of the ship in priority to a subsequent purchaser without notice¹⁵ and to a previous purchaser who has failed to register his title¹⁶.

The rights of mortgagees are deferred to those of persons having either possessory¹⁷ or maritime¹⁸ liens.

1 *Coombes v Mansfield* (1855) 24 LJ Ch 513. As to the meaning of 'registered mortgage' for the purposes of the Merchant Shipping Act 1995 see PARA 318 note 5.

2 *Black v Williams* [1895] 1 Ch 408. Where a registered mortgagee has taken possession of ship and freight, he will be entitled to reimburse himself not only for his advances on the ship, but also for any advances he may have made on the freight without notice of other equitable charges: *Liverpool Marine Credit Co v Wilson* (1872) 7 Ch App 507, 1 Asp MLC 323.

3 See *Barclay & Co Ltd v Poole* [1907] 2 Ch 284, 10 Asp MLC 574. The rights of a legal mortgagee of a registered American ship who agreed with his mortgagor to conceal the mortgage in order to facilitate the sale of the ship in England were also postponed: *Hooper v Gumm* (1862) 2 John & H 602.

4 *Ward v Royal Exchange Shipping Co, ex p Harrison* (1887) 6 Asp MLC 239.

5 As to the meaning of 'mortgage' for the purposes of the Merchant Shipping Act 1995 see PARA 318 note 3.

6 As to the meaning of 'ship' see PARA 229.

7 Merchant Shipping Act 1995 s 16(1), Sch 1 para 8(1). This provision is subject to Sch 1 para 8(2) (as to which see the text and notes 9-11): see Sch 1 para 8(1). As to the application of Sch 1 see PARA 252.

In certain circumstances the priorities as between registered mortgages may not depend on the dates, and in such cases the statutory provisions do not apply. Thus, a first mortgagee whose mortgage is taken to cover future advances cannot claim over a second mortgagee the benefit of advances made after he has notice of the second mortgage: *The Benwell Tower* (1895) 8 Asp MLC 13. A first registered mortgagee who enters into a subsequent mortgage agreement contained in a separate unregistered document will be postponed in respect

of advances made under his unregistered mortgage to a second registered mortgagee, even though the latter had notice of the prior unregistered mortgage: *Parr v Applebee* (1855) 24 LJ Ch 767. Where a second mortgagee unsuccessfully disputes the claim of the first mortgagee, he will have to pay the costs of the dispute: *The Volant* (1864) Brown & Lush 321; *The Western Ocean* (1870) LR 3 A & E 38.

8 See the Merchant Shipping Act 1995 Sch 1 para 9(2); and PARA 333. This provision refers only to registered mortgagees; quare whether unregistered mortgagees are within the principle. When a first mortgagee takes possession of the ship and freight, he may satisfy his own debt, and will then hold the balance for the benefit of subsequent mortgagees: *Tanner v Heard* (1857) 23 Beav 555; *The Benwell Tower* (1895) 8 Asp MLC 13. If there is such a balance, the first mortgagee becomes a trustee of the surplus proceeds and, if he retains them or converts them to his own use, the Limitation Act 1980 cannot be set up as a bar to a claim against him whether the trust is express or constructive: see s 21(1)(b); cf **LIMITATION PERIODS**; and *Banner v Berridge* (1881) 18 ChD 254, 4 Asp MLC 420 (decided when such a bar could be set up in favour of a constructive trustee but not in favour of an express trustee).

9 As to the meaning of 'registration regulations' see PARA 247.

10 As to the meaning of 'register' for these purposes see PARA 254 note 2.

11 Merchant Shipping Act 1995 Sch 1 para 8(2). As to priority notices see PARA 322.

12 *The Harriet* (1868) 18 LT 804.

13 *Dickinson v Kitchen* (1858) 8 E & B 789. The rule applies even where garnishee orders have been obtained: *Japp v Campbell* (1887) 57 LJQB 79. See also *De Wolf v Pitcairn* (1869) 17 WR 914 (creditor obtains debtor's rights subject to those of mortgagee); *Clydesdale Bank Ltd v Walker and Bain* 1926 SC 72. The creditors may arrest the ship in countries where the rights of mortgages, even though registered, are disregarded: *Liverpool Marine Credit Co v Hunter* (1868) 3 Ch App 479.

14 Ie as in the case of suppliers of goods and materials etc (*The Two Ellens* (1871) LR 3 A & E 345, 1 Asp MLC 40; and see *Simpson v Fogo* (1860) 1 John & H 18; *Castrique v Behrens* (1861) 3 E & E 709; *The Pacific* (1864) Brown & Lush 243; *The Scio* (1867) LR 1 A & E 353). It is otherwise where the supplier has a possessory lien (*Williams v Allsup* (1861) 10 CBNS 417; *The Scio*). See also *The Zigurds (No 4)* [1932] P 113, 18 Asp MLC 324; and PARA 1033. As to statutory rights in rem see PARA 1023; and as to possessory lien see PARA 1024. A mortgagee under a French *hypothèque*, although he has not the same right of property as under an English mortgage, has a right to arrest the ship in the hands of a subsequent owner. Since such a right resembles a maritime lien, the mortgagee is entitled under the *lex fori* to priority over suppliers of goods and materials etc: *The Colorado* [1923] P 102, 16 Asp MLC 145, CA.

15 *Cato v Irving* (1852) 5 De G & Sm 210.

16 *The Eastern Belle* (1875) 3 Asp MLC 19. Registered purchasers of shares are entitled, where they have contracted to do so, to apply the purchase money to paying off the ship's debts in priority to paying off an unregistered mortgage debt: *Barclay & Co Ltd v Poole* [1907] 2 Ch 284, 10 Asp MLC 574.

17 *Williams v Allsup* (1861) 10 CBNS 417; *The Scio* (1867) LR 1 A & E 353. Mortgagees, however, get their costs in priority to 'material men': *The Sherbro* (1883) 5 Asp MLC 88.

18 Ie as in the case of bottomry bond holders: *The Dowthorpe* (1843) 2 Wm Rob 73; and see *The Percy* (1837) 3 Hag Adm 402; *The Royal Arch* (1857) Sw 269. The principle applies even though the bond has been incurred in the course of a voyage taken in fraudulent breach of a contract existing between a mortgagor and mortgagee (*The Mary Ann* (1865) LR 1 A & E 8), or in the case of a master suing for wages or disbursements, even when appointed by the mortgagor (*The Mary Ann*; *The Feronia* (1868) LR 2 A & E 65; *The Ripon City* [1897] P 226, 8 Asp MLC 304). The priority does not extend to any part of the mortgage debt personally guaranteed by the master: *The Bangor Castle* (1896) 8 Asp MLC 156. The master's right of priority does not extend to the recovery of the amount of a bond which he has been forced to enter into by reason of his own negligent navigation: *The Limerick* (1876) 1 PD 411, 3 Asp MLC 206, CA. As to bottomry bonds see PARA 437; as to crew's wages see *The Prince George* (1837) 3 Hag Adm 376 and PARA 467 et seq; and as to maritime liens see PARA 1014 et seq.

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322. Notices by intending mortgagees; priority notices.

Where any person who is an intending mortgagee under a proposed mortgage of a registered ship¹ (or of a share in a registered ship)² notifies the registrar³ of the interest which it is intended that he should have under the proposed mortgage, the registrar must record that interest⁴. The notice to the registrar for these purposes must be in a form approved by the Secretary of State and must contain the name⁵ and official number of the ship⁶, the name, address and signature of the intending mortgagor, the number of shares to be mortgaged, and the name and address of the intending mortgagee⁷.

Where any person who is an intending mortgagee under a proposed mortgage of a ship which is not for the time being registered⁸ (or of a share in any such ship)⁹ notifies the registrar in writing of the interest which it is intended that he should have under the proposed mortgage¹⁰, the registrar must record that interest in the register¹¹ and, if the ship is subsequently registered, must register the ship subject to that interest (or, if the mortgage has by then been duly executed¹² and produced to the registrar, subject to that mortgage)¹³. Such notice must be in a form approved by the Secretary of State and must contain the following information¹⁴:

- 620 (1) the present name of the ship¹⁵;
- 621 (2) the intended name of the ship¹⁶;
- 622 (3) the approximate length of the ship¹⁷;
- 623 (4) where the ship is registered outside the United Kingdom¹⁸, a copy of its certificate of registry¹⁹ or other document evidencing its registration and giving its port of registration²⁰;
- 624 (5) where the ship is a new ship, the builder's certificate²¹ (or, if that is not available, the name and address of the builder and the ship's yard number)²²;
- 625 (6) where the ship is neither a new ship nor a registered ship, details of any permanent marks on the ship which enable it to be clearly identified²³;
- 626 (7) the name, address and signature of the intending mortgagor, the number of shares to be mortgaged, and the name and address of the intending mortgagee²⁴.

Any notification so given by a person²⁵, and anything done as a result of it, ceases to have effect²⁶: (a) if the notification is withdrawn²⁷; or (b) at the end of the period of 30 days beginning with the date of the notification, unless the notification is duly²⁸ renewed²⁹.

The person by whom any such notification is given may renew or further renew the notification on each occasion for a period of 30 days, by notice in writing given to the registrar before the end of the period mentioned in head (b) above³⁰ or before the end of a period of renewal³¹, as the case may be³².

In a case where the private law provisions relating to the priority of mortgages³³ operate to determine the priority between two or more mortgages³⁴ and where any of those mortgagees gave notification³⁵ with respect to his mortgage³⁶, those private law provisions have effect in relation to that mortgage as if it had been registered at the time when the relevant entry was made³⁷ in the register³⁸.

1 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(1)(a). As to the meaning of 'ship' for these purposes see PARA 255 note 4.

- 2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(1)(b).
- 3 As to the meaning of 'registrar' see PARA 255 note 2. Any notice given under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59 must be in a form approved by the Secretary of State: reg 59(8). As to the Secretary of State see PARA 38.
- 4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(1).
- 5 As to the proposal and approval of a ship's name see PARAS 277, 278.
- 6 As to the allocation of a ship's official number see PARA 279.
- 7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(2).
- 8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(3)(a).
- 9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(3)(b).
- 10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(3). As to notice given under reg 59 see note 3.
- 11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(3)(i). As to the meaning of 'register' see PARA 255 note 1.
- 12 It is executed in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 57 (as to which see PARA 319): see reg 59(3)(ii).
- 13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(3)(ii).
- 14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(4).
- 15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(4)(a).
- 16 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(4)(b).
- 17 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(4)(c).
- 18 As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 19 As to the meaning of 'certificate of registry' see PARA 255 note 17. As to the power to dispense with the production of a certificate in certain circumstances see PARA 376.
- 20 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(4)(d).
- 21 As to the meaning of 'builder's certificate' see PARA 275 note 5.
- 22 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(4)(e).
- 23 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(4)(f).
- 24 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(4)(g).
- 25 It is under either the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(1) (see the text and notes 1-4) or reg 59(3) (see the text and notes 8-13): see reg 59(6).
- 26 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(6).
- 27 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(6)(a).
- 28 It is in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(7) (see the text and notes 30-32): see reg 59(6)(b).
- 29 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(6)(b).
- 30 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(7)(a). As to notice given under reg 59 see note 3.

31 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(7)(b).

32 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(7).

33 Ie the Merchant Shipping Act 1995 s 16(1), Sch 1 para 8 (as to which see PARA 321): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(5)(a); Interpretation Act 1978 s 17(2) (b). As to the application of the Merchant Shipping Act 1995 Sch 1 see PARA 252.

34 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(5)(a).

35 Ie under either the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(1) (see the text and notes 1-4) or reg 59(3) (see the text and notes 8-13): see reg 59(5)(b).

36 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(5)(b).

37 Ie under either the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(1) (see the text and notes 1-4) or reg 59(3) (see the text and notes 8-13): see reg 59(5).

38 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 59(5); Interpretation Act 1978 s 17(2)(b).

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B. TRANSFER AND TRANSMISSION OF REGISTERED MORTGAGES

323. Transfer of registered mortgage.

A registered mortgage¹ may be transferred by an instrument made in the form prescribed² by or approved under registration regulations³.

Where any such instrument is produced to the registrar⁴, the registrar must register the transferee in the prescribed manner⁵.

1 As to the meaning of 'mortgage' for the purposes of the Merchant Shipping Act 1995 see PARA 318 note 3; and as to the meaning of 'registered mortgage' for these purposes see PARA 318 note 5.

2 For these purposes, 'prescribed' means prescribed in registration regulations: Merchant Shipping Act 1995 s 16(1), Sch 1 para 14. As to the meaning of 'registration regulations' see PARA 247. As to the application of Sch 1 see PARA 252.

3 Merchant Shipping Act 1995 Sch 1 para 11(1).

4 As to the meaning of 'registrar' for these purposes see PARA 254 note 11.

5 Merchant Shipping Act 1995 Sch 1 para 11(2). As to registration of a transfer of mortgage see PARA 326.

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324. Transmission of registered mortgage by operation of law.

Where the interest of a mortgagee in a registered mortgage¹ is transmitted to any person by any lawful means other than by a transfer², the registrar³ must, on production of the prescribed⁴ evidence, cause the name of that person to be entered in the register⁵ as mortgagee of the ship⁶ or share in question⁷.

1 As to the meaning of 'mortgage' for the purposes of the Merchant Shipping Act 1995 see PARA 318 note 3; and as to the meaning of 'registered mortgage' for these purposes see PARA 318 note 5.

2 Ie other than by a transfer under the Merchant Shipping Act 1995 s 16(1), Sch 1 para 11 (see PARA 323); see Sch 1 para 12. As to the application of Sch 1 see PARA 252.

3 As to the meaning of 'registrar' for these purposes see PARA 254 note 11.

4 For these purposes, 'prescribed' means prescribed in registration regulations: Merchant Shipping Act 1995 Sch 1 para 14. As to the meaning of 'registration regulations' see PARA 247.

5 As to the meaning of 'register' for these purposes see PARA 254 note 2.

6 As to the meaning of 'ship' see PARA 229.

7 Merchant Shipping Act 1995 Sch 1 para 12. As to the evidence to be produced see PARA 325; and as to registration see PARA 326.

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325. Evidence of transmission of mortgage.

On the application for registration¹ of a transmission of a registered mortgage², the evidence to be produced to the registrar³ is:

- 627 (1) a declaration of transmission of mortgage in a form approved by the Secretary of State⁴; and
- 628 (2) if the transmission was consequent on death, the grant of representation⁵ (or any office copy thereof or an extract therefrom)⁶; or, if the transmission was consequent on bankruptcy, such evidence as is for the time being receivable in courts of justice as proof of title of persons claiming under bankruptcy⁷; or, if the transmission was consequent on an order of a court, a copy of the order of that court⁸.

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 As mentioned in the Merchant Shipping Act 1995 s 16(1), Sch 1 para 12 (see PARA 324): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 60 (substituted by SI 1994/541); Interpretation Act 1978 s 17(2)(b).

3 As to the meaning of 'registrar' see PARA 255 note 2.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 60(a) (as substituted: see note 2). As to the Secretary of State see PARA 38. As to the power to dispense with declarations or other evidence otherwise required under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, see PARA 371.

5 As to the meaning of 'representation' for these purposes see PARA 310 note 7.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 60(b)(i) (as substituted: see note 2).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 60(b)(ii) (as substituted: see note 2).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 60(b)(iii) (as substituted: see note 2).

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326. Transfer or transmission of registered mortgage.

Where a transfer of a registered mortgage under the Merchant Shipping Act 1995¹, or evidence of a transmission of a registered mortgage², is produced to the registrar³, he must⁴:

- 629 (1) enter the name of the transferee (or the name of the person to whom the mortgage has been transmitted) in the register⁵ as mortgagee of the ship⁶ or share in question⁷;
- 630 (2) in respect of a transfer, endorse on the instrument of transfer the date and time the entry was made⁸.

1 He under the Merchant Shipping Act 1995 s 16(1), Sch 1 para 11: see PARA 323. As to the meaning of 'mortgage' for the purposes of the Merchant Shipping Act 1995 see PARA 318 note 3; and as to the meaning of 'registered mortgage' for these purposes see PARA 318 note 5.

2 As to such evidence see PARA 325.

3 As to the meaning of 'registrar' see PARA 255 note 2.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 61 (substituted by SI 1994/541).

5 As to the meaning of 'register' see PARA 255 note 1.

6 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 61(a) (as substituted: see note 4).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 61(b) (as substituted: see note 4).

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C. MORTGAGEE'S RIGHTS AND POWERS

327. In general.

The rights of mortgagees of ships are, so far as the special nature of the security permits, governed by the rules of law laid down in respect of the mortgages of other chattels¹. However, as a ship differs in many respects from other forms of security², these rights have been the subject of special statutory enactments and numerous decisions³.

1 *Thompson v Smith* (1815) 1 Madd 395; *The Benwell Tower* (1895) 8 Asp MLC 13; *Fletcher and Campbell v City Marine Finance Ltd* [1968] 2 Lloyd's Rep 520. As to rights of a mortgagee generally see **MORTGAGE** vol 77 (2010) PARA 393 et seq.

2 *Hooper v Gumm, McLellan v Gumm* (1867) 2 Ch App 282.

3 See PARA 328 et seq.

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328. Protection of registered mortgagees.

Where a ship¹ or share is subject to a registered mortgage² then³:

- 631 (1) except so far as may be necessary for making the ship or share available as a security for the mortgage debt, the mortgagee is not by reason of the mortgage to be treated as owner of the ship or share⁴; and
- 632 (2) the mortgagor is to be treated as not having ceased to be owner of the ship or share⁵.

The result is that, while as between the parties to the mortgage the property in the ship has passed⁶, so far as regards third persons, the mortgagor remains in charge with regard to everything connected with the employment of the ship⁷, and the mortgagee is protected from liabilities connected with her⁸.

1 As to the meaning of 'ship' see PARA 229.

2 As to the meaning of 'mortgage' for the purposes of the Merchant Shipping Act 1995 see PARA 318 note 3; and as to the meaning of 'registered mortgage' for these purposes see PARA 318 note 5.

3 Merchant Shipping Act 1995 s 16(1), Sch 1 para 10. As to the application of Sch 1 see PARA 252.

4 Merchant Shipping Act 1995 Sch 1 para 10(a).

5 Merchant Shipping Act 1995 Sch 1 para 10(b).

6 *The Blanche* (1887) 6 Asp MLC 272.

7 *Keith v Burrows* (1877) 2 App Cas 636, 3 Asp MLC 481, HL; and see *Collins v Lamport* (1864) 4 De GJ & Sm 500.

8 *Dickinson v Kitchen* (1858) 8 E & B 789. As between himself and the mortgagor, the mortgagee may assume some of the liabilities of the owner of a ship: *Hudson and Humphrey v Swiftsure (Owners)*, *The Swiftsure* (1900) 9 Asp MLC 65.

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329. Injunction at suit of charterer against mortgagees out of possession.

An injunction may be granted at the suit of the charterers from a mortgagor of a ship to restrain registered mortgagees who are out of possession¹ from dealing with the ship in any manner which may interfere with the execution of the charterparty, provided that it is not shown that the charterparty is in any way prejudicial to the sufficiency of the mortgagees' security². If, however, the charterparty impairs their security, the mortgagees are not bound by it³.

1 As to the mortgagees' right to possession and their position when in possession see PARA 330 et seq.

2 *Collins v Lamport* (1864) 4 De GJ & Sm 500; *The Fanchon* (1880) 5 PD 173, 4 Asp MLC 272; *The Heather Bell* [1901] P 272, 9 Asp MLC 206, CA. See also the Merchant Shipping Act 1995 s 16(1), Sch 1 para 10 (cited in PARA 328); and **CIVIL PROCEDURE** vol 11 (2009) PARA 472. Cf *The Lord Strathcona* [1925] P 143, 16 Asp MLC 536 (mortgagor unable to perform the charterparty; mortgagee granted order for sale); and see PARA 331 note 7.

3 *Law Guarantee and Trust Society v Russian Bank for Foreign Trade* [1905] 1 KB 815, 10 Asp MLC 41, CA. See also *The Heather Bell* [1901] P 272, 9 Asp MLC 206, CA; *The Manor* [1907] P 339, 10 Asp MLC 446, CA.

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330. Mortgagee's right to possession.

The chief right of a mortgagee of a ship¹, or of a majority of shares in a ship, is the right in proper circumstances to take possession. This he may do even before any part of the mortgage debt is due² if his security is being impaired³ in some material way⁴.

Possession may be either actual or constructive. Actual possession may be taken either by putting a person in possession without the assistance of the court, or by the arrest of the ship in a mortgagee's action⁵. To obtain constructive possession the mortgagee must clearly indicate his intention to assume the rights of ownership⁶.

Where the mortgagee is justified in taking possession, and in so doing has been compelled to pay off claims for wages or disbursements, or to incur other expenses to avoid the exercise of a maritime lien⁷ by third persons, he can recover the amount expended from the mortgagor⁸.

1 *Japp v Campbell* (1887) 57 LJQB 79. As to the position of mortgagor and mortgagee generally see PARA 328.

2 In considering whether any part of the mortgage debt is due, the court will enforce all the equities between the parties: *The Cathcart* (1867) LR 1 A & E 314.

3 *The Blanche* (1887) 6 Asp MLC 272; *The Manor* [1907] P 339, 10 Asp MLC 446, CA. The security may be impaired by the action of the mortgagor himself, eg by the carriage of contraband (*Law Guarantee and Trust Society v Russian Bank for Foreign Trade* [1905] 1 KB 815, 10 Asp MLC 41, CA), or by so working the ship as to render her constantly liable to arrest (*The Manor*), or by the action of other persons, such as creditors, who may desire to seize the ship (*Dickinson v Kitchen* (1858) 8 E & B 789). See also *The Lord Strathcona* [1925] P 143, 16 Asp MLC 536; *Jackson v Vernon* (1789) 1 Hy Bl 114; *Baker v Buckle* (1822) 7 Moore CP 349; *Briggs v Wilkinson* (1827) 7 B & C 30; *The Celtic King* [1894] P 175, 7 Asp MLC 400; *The Myrto* [1977] 2 Lloyd's Rep 243 (on appeal [1978] 1 Lloyd's Rep 11, CA). In the following cases the security was held not to be impaired: *De Mattos v Gibson* (1858) 5 Jur NS 347; *Collins v Lamport* (1864) 4 De GJ & Sm 500; *The Innisfallen* (1866) LR 1 A & E 72; *The Cathcart* (1867) LR 1 A & E 314; *The Maxima* (1878) 4 Asp MLC 21; *Cory Bros & Co v Stewart* (1886) 2 LTR 508, CA; *The Blanche* (1887) 6 Asp MLC 272.

4 It is not enough merely to show that the enforcement of the security is about to be rendered difficult by the removal of the ship from the jurisdiction: *The Fanchon* (1880) 5 PD 173, 4 Asp MLC 272. Nor will the mortgagee be entitled to bail in such a case (*The Highlander* (1843) 2 Wm Rob 109); nor is it enough to show that the ship is not profitably employed (*Keith v Burrows* (1877) 2 App Cas 636, 3 Asp MLC 481, HL). As to failure to insure see *Laming & Co v Seater* (1889) 16 R 828; *The Heather Bell* [1901] P 272, 9 Asp MLC 206, CA; *Law Guarantee and Trust Society v Russian Bank for Foreign Trade* [1905] 1 KB 815, 10 Asp MLC 41, CA.

5 See PARA 161 et seq. Where the charterparty is not prejudicial to the security, a mortgagee of shares may not bring an action of restraint: *The Innisfallen* (1866) LR 1 A & E 72. As to costs see *The Kestrel* (1866) LR 1 A & E 78; applied in *Re Adelphi Hotel (Brighton) Ltd, District Bank Ltd v Adelphi Hotel (Brighton) Ltd* [1953] 2 All ER 498, [1953] 1 WLR 955. As to mortgagees' possession generally see **MORTGAGE** vol 77 (2010) PARA 417 et seq.

6 *The Benwell Tower* (1895) 8 Asp MLC 13. See also *Rusden v Pope* (1868) LR 3 Exch 269; *Beynon v Godden* (1878) 3 Ex D 263, 4 Asp MLC 10, CA.

7 As to maritime liens see PARA 1014 et seq.

8 The mortgagee recovers on the principle that he has paid a debt for which another was liable by compulsion of law: *Johnson v Royal Mail Steam Packet Co* (1867) LR 3 CP 38; *The Orchis* (1890) 15 PD 38, 6 Asp MLC 501, CA; *The Heather Bell* [1901] P 272, 9 Asp MLC 206, CA. As to this principle generally see **RESTITUTION** vol 40(1) (2007 Reissue) PARA 63 et seq. The principle appears to cover both the payment off of claims for wages and of those for disbursements: *The Blazer* (6 February 1911, unreported). It appears that the correct course for a mortgagee who has paid off liens or who desires to do so is to obtain leave from the court to stand

in the shoes of the lien holder as against the mortgagor: *The Blazer*. To what extent the mortgagee may recover in rem money so paid in addition to the mortgage debt seems doubtful: *The Cornelia Henrietta* (1866) LR 1 A & E 51; *The St Lawrence* (1880) 5 PD 250; *The Tagus* [1903] P 44, 9 Asp MLC 371. Mortgagees of shares in a ship will not be held liable to contribute to the paying off of liens by other part owners, and will not be held impliedly to have authorised such payment merely from the fact that their property may have been thereby benefited: *The Ripon City* [1898] P 78, 8 Asp MLC 391.

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331. General position of mortgagee in possession.

On taking possession¹, the mortgagee becomes entitled to enjoy any contractual rights relating to the employment of the ship into which the mortgagor may have entered². The mortgagee, in addition to being liable for expenses incurred in the future working of the ship³, is, however, bound⁴ to perform contractual duties incurred by the mortgagor which are of a kind usually incurred by a person who has the apparent ownership and control of a vessel⁵, provided that such engagements relate solely to the future⁶ and are not of such a nature as to impair the security⁷.

1 As to the mortgagee's right to take possession see PARA 330.

2 *Gumm v Tyrie* (1865) 6 B & S 298, Ex Ch; *Keith v Burrows* (1877) 2 App Cas 636, 3 Asp MLC 481, HL; *Stellar Chartering and Brokerage Inc v Efibanca-Ente Finanziario Interbancario SpA, The Span Terza (No 2)* [1984] 1 WLR 27, [1984] 1 Lloyd's Rep 119, HL (charterparty provided for delivery of bunkers to shipowners on delivery of vessel; mortgagees obtained order for sale of vessel; charterparty cancelled prematurely; term did not apply literally where premature cancellation, and no reason to imply it). As to the right to freight and the right to sell see PARAS 332, 333.

3 *Re Litherland, ex p Howden* (1842) 2 Mont D & De G 574.

4 *Collins v Lamport* (1864) 4 De GJ & Sm 500; *Cory Bros & Co v Stewart* (1886) 2 TLR 508, CA.

5 *Williams v Allsup* (1861) 10 CBNS 417; *Johnson v Royal Mail Steam Packet Co* (1867) LR 3 CP 38; and see **MORTGAGE** vol 77 (2010) PARA 246.

6 Neither the mortgagee nor the ship, when it has passed into his possession, is liable to the mortgagor's creditors unless such creditors are in a position to exercise a maritime lien: *The Troubadour* (1866) LR 1 A & E 302; *The El Argentino* [1909] P 236, 11 Asp MLC 280; *Clydesdale Bank Ltd v Walker and Bain* 1926 SC 72. As to maritime liens see PARA 1014 et seq. Although not personally liable, the mortgagee may always come in and defend the ship when sued, but only such defences are open to him as would have been open to the mortgagor: *The Julindur* (1853) 1 Ecc & Ad 71; *The Chieftain* (1863) Brown & Lush 104.

7 *Law Guarantee and Trust Society v Russian Bank for Foreign Trade* [1905] 1 KB 815, 10 Asp MLC 41, CA. It appears that the mortgagee will not be bound, even though the contract was entered into before the mortgage came into existence, provided that he cannot be considered to have had notice or its equivalent (*The Celtic King* [1894] P 175, 7 Asp MLC 440); but see *Law Guarantee and Trust Society v Russian Bank for Foreign Trade*. If the mortgagee takes his mortgage with knowledge of a contract, he is bound: *De Mattos v Gibson* (1858) 5 Jur NS 347. Cf *The Lord Strathcona* [1925] P 143, 16 Asp MLC 536 (where the question whether a mortgagee is bound by a prior charterparty of which he had notice is discussed). As to impairment of the security see the cases cited in PARA 330 note 3.

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332. Mortgagee's right to freight.

Until the mortgagee takes possession¹, the earnings of the ship, apart from special stipulation, remain the property of the mortgagor², but, directly the mortgagee takes possession, he becomes entitled to all the freight³ not already due and payable⁴. When the freight has once come into the mortgagor's hands, the mortgagee, unless by some right other than that afforded by the mere mortgage⁵, cannot recover it from him⁶.

1 As to the mortgagee's right to take possession see PARA 330.

2 *Keith v Burrows* (1877) 2 App Cas 636, 3 Asp MLC 481, HL; and see *Rusden v Pope* (1868) LR 3 Exch 269; *Brown v Tanner* (1868) 3 Ch App 597; *Liverpool Marine Credit Co v Wilson* (1872) 7 Ch App 507, 1 Asp MLC 323, CA; *Wilson v Wilson* (1872) LR 14 Eq 32, 1 Asp MLC 265; *Anderson v Butler's Wharf Co Ltd* (1879) 48 LJ Ch 824; *The Benwell Tower* (1895) 8 Asp MLC 13. As to a separate mortgage of freight see **MORTGAGE** vol 77 (2010) PARA 247; and as to the position of the mortgagor and mortgagee generally see PARA 328.

3 The freight to which the mortgagee is entitled is the gross freight without any deduction of sums which may be due to the charterer from the mortgagor (*Tanner v Phillips* (1872) 42 LJ Ch 125, 1 Asp MLC 448), or of any expenditure not authorised by him incurred in the earning of the freight (*The El Argentino* [1909] P 236, 11 Asp MLC 280). As to the position of an assignee of freight see PARA 334; and as to the payment of freight generally see **CARRIAGE AND CARRIERS**.

4 If possession is taken before the voyage is concluded by the delivery or the cargo, the mortgagee is entitled to freight: *Cato v Irving* (1852) 5 De G & Sm 210; *Brown v Tanner* (1868) 3 Ch App 597. It is doubtful whether the mortgagee is entitled to the freight where the mortgagor has landed the goods retaining a lien for freight: *Belfast Harbour Comrs v Lawther and Marine Investment Society*, *The Edward Cardwell* (1865) 12 LT 677. The mortgagee is not entitled to freight, even though unpaid at the time of taking possession, if he has not taken possession until the cargo is delivered and the freight earned: *Shillito v Biggart* [1903] 1 KB 683, 9 Asp MLC 396. A mortgagee of shares is entitled to his proper share of freight earned and received after taking possession: *Alexander v Simms* (1854) 5 De GM & G 57; *Essarts v Whinney* (1903) 9 Asp MLC 363, CA. In certain cases the court may appoint a receiver: *Burn v Herlofson and Siemens*, *The Faust* (1887) 6 Asp MLC 126, CA; and see **RECEIVERS** vol 39(2) (Reissue) PARA 314.

5 *Willis v Palmer* (1860) 7 CBNS 340.

6 *Gardner v Cazenove* (1856) 1 H & N 423.

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333. Registered mortgagee's power of sale.

A registered mortgagee¹ in possession has complete control over the ship².

Every registered mortgagee has power, if the mortgage money or any part of it is due, to sell the ship³ or share in respect of which he is registered, and to give effectual receipts for the purchase money⁴. However, where two or more mortgagees are registered in respect of the same ship or share, a subsequent mortgagee may not, except under an order of a court of competent jurisdiction⁵, sell the ship or share without the concurrence of every prior mortgagee⁶.

A mortgagee may recover the expenses of the sale from the mortgagor⁷.

1 As to the creation of mortgages see PARA 318 et seq.

2 *The Fairport* (1884) 10 PD 13, 5 Asp MLC 348 (dismissal of master). As to the mortgagee's right to take possession see PARA 330.

3 As to the meaning of 'ship' see PARA 229.

4 Merchant Shipping Act 1995 s 16(1), Sch 1 para 9(1). As to the application of Sch 1 see PARA 252.

5 As to the court's power of sale see PARA 241.

6 Merchant Shipping Act 1995 Sch 1 para 9(2). As to priorities of registered mortgages see PARA 321. The court may grant a sale to a mortgagee of shares: *The Fairlie* (1868) 37 LJ Adm 66. A mortgagee in possession is not bound to sell the ship, but may employ her in such a way as not to impair her value, and must not sell her disadvantageously: *European and Australian Royal Mail Co Ltd v Royal Mail Steam Packet Co* (1858) 4 K & J 676; *Marriott v Anchor Reversionary Co* (1861) 3 De GF & J 177; *Haviland Routh & Co v Thomson* (1864) 3 M 313. The mortgagee cannot be compelled by other persons interested to employ the ship instead of selling her: *Samuel v Jones* (1862) 7 LT 760. As between the mortgagor and mortgagee, the mortgagee may agree to terms limiting his powers of sale: *Brouard v Dumaresque* (1841) 3 Moo PCC 457; *Dickinson v Kitchen* (1858) 8 E & B 789.

7 *Wilkes v Saunion* (1877) 7 ChD 188.

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334. Position of assignee of freight.

An assignee of freight¹ has no rights as against a first mortgagee who has taken possession of freight by virtue of his mortgage², unless the assigned freight became due and payable before possession was taken³; but the assignee of freight has priority over a second mortgagee, even though he has taken the assignment with notice of the second mortgage⁴. Assignees of freight are entitled to the whole freight mentioned in the bill of lading, without deduction of amounts due from the assignor to the consignees⁵.

1 As to a mortgagee's right to freight see PARA 332.

2 See *Liverpool Marine Credit Co v Wilson* (1872) 7 Ch App 507, 1 Asp MLC 323; *Wilson v Wilson* (1872) LR 14 Eq 32, 1 Asp MLC 265; *The Benwell Tower* (1895) 8 Asp MLC 13; *Black v Williams* [1895] 1 Ch 408. Assignments of freight, if legal, are governed by the Law of Property Act 1925 s 136(1) (see **CHOSES IN ACTION** vol 13 (2009) PARA 14 et seq) or, if equitable, by the rules of equity (see **CHOSES IN ACTION** vol 13 (2009) PARA 24 et seq).

3 *Shillito v Biggart* [1903] 1 KB 683, 9 Asp MLC 396. See also *Re The Pride of Wales and The Annie Lisle (Mortgagees)* (1867) 15 LT 606 (priority of trustee in bankruptcy); *Ward v Royal Exchange Shipping Co, ex p Harrison* (1887) 6 Asp MLC 239 (priority of debenture holders); *The Benwell Tower* (1895) 8 Asp MLC 13 (priority of second mortgagees); *Smith v Zigurds (Owners) and EA Casper, Edgar & Co Ltd* [1934] AC 209, 47 Ll L Rep 267, HL (priority of assignee). The usual rule as among persons with equitable charges is that he who is first has the strongest right: see **EQUITY** vol 16(2) (Reissue) PARA 568.

4 *Liverpool Marine Credit Co v Wilson* (1872) 7 Ch App 507, 1 Asp MLC 323, CA.

5 *Weguelin v Cellier* (1873) LR 6 HL 286. As to the mortgage of freight see **MORTGAGE** vol 77 (2010) PARA 247.

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D. DISCHARGE OF REGISTERED MORTGAGES

335. Discharge of mortgages.

Where a registered mortgage¹ has been discharged, the registrar² must, on production of the mortgage deed and with such evidence of the discharge as may be prescribed³, cause an entry to be made in the register⁴ to the effect that the mortgage has been discharged⁵.

If for good reason the registered mortgage cannot be produced to the registrar, he may, on being satisfied that the mortgage has been properly discharged, record in the register that the mortgage has been discharged⁶.

1 As to the meaning of 'mortgage' for the purposes of the Merchant Shipping Act 1995 see PARA 318 note 3; and as to the meaning of 'registered mortgage' for these purposes see PARA 318 note 5.

2 As to the meaning of 'registrar' for these purposes see PARA 254 note 11.

3 For these purposes, 'prescribed' means prescribed in registration regulations: Merchant Shipping Act 1995 s 16(1), Sch 1 para 14. As to the meaning of 'registration regulations' see PARA 247. As to the application of Sch 1 see PARA 252.

4 As to the meaning of 'register' see PARA 254 note 2.

5 Merchant Shipping Act 1995 Sch 1 para 13. Accordingly, where a registered mortgage has been discharged, the registrar must, on production of the mortgage deed and with such evidence of the discharge as satisfies him that the mortgage has been discharged, record in the register that the mortgage has been discharged: Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 62(1). As to the meaning of 'register' for these purposes see PARA 255 note 1; and as to the meaning of 'registrar' for these purposes see PARA 255 note 2.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 62(2).

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336. Effect of termination of registration on registered mortgage.

Where the registration of a ship¹ terminates², that termination does not affect any entry in the register³ of any undischarged registered mortgage⁴ of that ship or any share in it⁵.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 I.e. by virtue of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 63. As to the termination of a ship's registration see PARA 317.

3 As to the meaning of 'register' for these purposes see PARA 255 note 1.

4 As to the meaning of 'mortgage' for the purposes of the Merchant Shipping Act 1995 see PARA 318 note 3; and as to the meaning of 'registered mortgage' for these purposes see PARA 318 note 5.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 63.

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(viii) Provisional Registration

337. Provisional registration.

Where a ship¹ which the owner² intends should be registered on Part I or Part II of the register³ is outside the British Islands⁴, the owner may apply to the registrar⁵ for provisional registration, or, if the ship is at a port outside the British Islands, the owner may alternatively apply to the appropriate person⁶ for provisional registration of the ship⁷.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

3 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part I of the register, as mentioned in the text, is for ships, owned by qualified persons, which are not fishing vessels or registered on that Part which is restricted to small ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(a); and PARA 255. Part II of the register is for fishing vessels: see reg 2(1)(b); and PARA 255. As to the status of any Part II certificate under sea fisheries legislation see PARA 377. As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

4 As to the meaning of 'British Islands' see **STATUTES** vol 44(1) (Reissue) PARA 1383.

5 As to the meaning of 'registrar' for these purposes see PARA 255 note 2.

6 For these purposes, 'appropriate person' means, in relation to a port in a country outside the British Islands: (1) any British consular officer within whose consular district the port lies; (2) where Her Majesty's government in the United Kingdom is represented in that country by a High Commissioner, any member of the High Commissioner's official staff nominated by him for the purposes of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138; or (3) where that country is a colony, the governor of the colony or any person appointed by him for those purposes; and 'High Commissioner' includes an acting High Commissioner and 'governor' includes an acting governor: reg 1(2). As to the meaning of 'colony' see **STATUTES** vol 44(1) (Reissue) PARA 1383. As to British consular officers see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 30.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 64. As to applications for provisional registration see PARA 338.

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338. Application for provisional registration.

An application for provisional registration¹ must be in a form approved by the Secretary of State² and must be accompanied by the prescribed particulars³.

Where application is made to the appropriate person⁴, he must forward those particulars to the registrar⁵ who must, if he is satisfied that the ship⁶ is eligible for registration, notify the appropriate person accordingly⁷.

1 As to provisional registration see PARA 337.

2 As to the Secretary of State see PARA 38.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 65 (amended by SI 1994/541). The particulars so prescribed are those required by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 22(1) (applications for registration) (as to which see PARA 272) and reg 24 (applications by bodies corporate) (as to which see PARA 273): see reg 65 (as so amended). As to the requirement to supply supplementary information or evidence where that provided on an application for registration is judged to be either not correct or insufficient see PARA 372. Documents not in the English language which are produced in support of any application under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138 must be accompanied by a translation: see PARA 369.

4 As to the meaning of 'appropriate person' for these purposes see PARA 337 note 6.

5 As to the meaning of 'registrar' for these purposes see PARA 255 note 2.

6 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 66.

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339. Certification of provisional registration and its terms.

The registrar¹, on being satisfied that the ship² is eligible for provisional registration³, or the appropriate person⁴ on receipt of such notification⁵ (but not otherwise), may proceed to register the ship provisionally for a period of three months⁶.

The registrar or the appropriate person must issue to the owner⁷ of the ship a certificate of provisional registration in a form approved by the Secretary of State⁸. The certificate has the effect of a certificate of registry⁹ until¹⁰:

- 633 (1) the expiration of three months from its date of issue¹¹; or
- 634 (2) the ship's arrival in the United Kingdom¹²; or
- 635 (3) termination by the registrar on request from the owner¹³,

whichever first occurs¹⁴.

Where a ship has been provisionally registered once, it may not be provisionally registered again within one year of the date of the issue of the certificate of provisional registration, except with the consent of the registrar¹⁵.

1 As to the meaning of 'registrar' for these purposes see PARA 255 note 2.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 As to provisional registration see PARA 337; and as to applications for provisional registration see PARA 338.

4 As to the meaning of 'appropriate person' for these purposes see PARA 337 note 6.

5 I.e. notification made to the appropriate person by the registrar that he (the registrar) is satisfied that the ship is eligible for registration: see PARA 338.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 67.

7 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 68. As to the Secretary of State see PARA 38.

9 As to the meaning of 'certificate of registry' see PARA 255 note 17.

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 68.

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 68(a).

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 68(b). As to the meaning of 'United Kingdom' see PARA 17 note 3.

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 68(c).

14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 68.

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 69.

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340. Condition of provisional registration for fishing vessels.

It is a condition of provisional registration for fishing vessels¹ that the vessel must not fish for profit while so registered²; and, if any provisionally registered vessel does fish for profit, its provisional registration immediately thereon terminates and the owner must as soon as practicable surrender the certificate of provisional registration³ to the registrar⁴.

1 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7. As to provisional registration see PARA 337; as to applications for provisional registration see PARA 338; and as to the certification of provisional registration and its terms see PARA 339.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 70.

3 As to the certificate of provisional registration see PARA 339.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 70. As to the meaning of 'registrar' for these purposes see PARA 255 note 2.

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(ix) Transfers to, from or within the Register

341. Transfer of registration to relevant British possession.

The registration of a ship¹ registered on Part I of the register² may be transferred from the register to the register of a port in a relevant British possession³. Where such an application is made for the transfer of a ship's registration, the registrar⁴ must not proceed to deal with the application unless he is satisfied that registration of the ship at the intended port of registration is not precluded by either⁵:

- 636 (1) any Order in Council in force under the Merchant Shipping Act 1995⁶; or
- 637 (2) any provision of the law in force in the possession in question⁷;

and any certificate purporting to be signed by the registrar of the intended port of registration and stating that any such provision is in force is conclusive evidence for the purposes of these provisions of the matters stated in it⁸.

Where the registrar of the intended port of registration issues a certificate of registry⁹ following any such application and on notification of the transfer by the registrar of the new port of registration, the registrar must terminate the registration of the ship¹⁰.

Where the registration of a ship is transferred in this way¹¹, the certificate of registry must be surrendered to the registrar for cancellation¹².

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part I of the register, as mentioned in the text, is for ships, owned by qualified persons, which are not fishing vessels or registered on that Part which is restricted to small ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(a); and PARA 255. As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 71(1). As to the meaning of 'relevant British possession' under the Merchant Shipping Act 1995 see PARA 17 note 3. As to the registrar's power, in certain circumstances, to transfer the registration of a ship from one Part of the register to a different Part see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72A; and PARA 343.

4 As to the meaning of 'registrar' for these purposes see PARA 255 note 2.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 71(2).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 71(2)(a); Interpretation Act 1978 s 17(2)(b). The text refers to any Order in Council in force under the Merchant Shipping Act 1995 s 18 (as to which see PARA 246): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 71(2)(a); Interpretation Act 1978 s 17(2)(b).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 71(2)(b).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 71(2). Documents not in the English language which are produced in support of any application under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138 must be accompanied by a translation: see PARA 369.

- 9 As to the meaning of 'certificate of registry' see PARA 255 note 17.
- 10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 71(3).
- 11 le under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 71: see reg 71(4).
- 12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 71(4).

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342. Transfer of registration from relevant British possession.

Where a ship¹, excluding a fishing vessel², is registered in a relevant British possession³, the registration of that ship may be transferred to Part I of the register⁴ if⁵:

- 638 (1) an application to the registrar⁶ of the existing port of registration has been made for that purpose by a declaration in writing by all the persons appearing on his register to be interested in the ship as owners⁷; and
- 639 (2) the following documents have been transmitted to the registrar⁸:
 - 13 40. (a) a copy of the application and declaration required by head (1) above transmitted by the registrar at the existing port of registration⁹;
 - 41. (b) a copy transmitted by him of all the registered particulars of the ship¹⁰ and the names of all persons appearing on his register to be interested in the ship as owners and mortgagees¹¹; and
 - 42. (c) the ship's certificate of registry¹².
- 14

On making an application to transfer to the register, the applicant must specify one of the listed ports¹³ which it is intended shall be the ship's port of choice¹⁴.

Where the ship has not previously been required by the registrar of its existing port of registration to have its name approved by the registrar¹⁵, the applicant must propose a name which the ship is to be called¹⁶. On being satisfied that the name complies with the statutory requirements¹⁷, the registrar must issue a marking note¹⁸. On receipt of a marking note, the owner must proceed in accordance with the provisions¹⁹ relating to re-marking of the ship²⁰.

On receipt of the required documents²¹ and the completed marking note, the registrar must enter in the register all the particulars and names so transmitted and issue a new certificate of registry²².

Where entitlement of a ship to be registered is²³ subject to any condition specified in that registration being satisfied, the registration of the ship may not be transferred to the register of British ships²⁴ in the United Kingdom²⁵ unless it appears to the registrar that that condition is satisfied²⁶.

A transfer of registration from a relevant British possession²⁷ does not affect the rights of any person mentioned in head (1) above²⁸.

Notwithstanding that a ship is otherwise entitled to be registered, the registrar may refuse to register it if, taking into account any requirement of the Merchant Shipping Act 1995, including any instrument made thereunder, relating to the condition of the ship or its equipment so far as it is relevant to its safety or to any risk of pollution or to the safety, health and welfare of persons employed or engaged in any capacity on board the ship, he considers that it would be inappropriate for the ship to be registered²⁹.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

- 3 As to the meaning of 'relevant British possession' under the Merchant Shipping Act 1995 see PARA 17 note 3.
- 4 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part I of the register, as mentioned in the text, is for ships, owned by qualified persons, which are not fishing vessels or registered on that Part which is restricted to small ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(a); and PARA 255. As to the meaning of 'small ship' for these purposes see PARA 255 note 6. As to the registrar's power, in certain circumstances, to transfer the registration of a ship from one Part of the register to a different Part see reg 72A; and PARA 343.
- 5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(1).
- 6 As to the meaning of 'registrar' for these purposes see PARA 255 note 2.
- 7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(1)(a). As to the meaning of 'owner' for these purposes see PARA 255 note 13. Documents not in the English language which are produced in support of any application under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138 must be accompanied by a translation: see PARA 369. As to the power to dispense with declarations or other evidence otherwise required under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, see PARA 371.
- 8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(1)(b).
- 9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(1)(b)(i).
- 10 As to the requirements of registration under the Merchant Shipping Act 1995 see PARA 245 et seq.
- 11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(1)(b)(ii). As to mortgages of registered ships under the Merchant Shipping Act 1995 see PARA 318 et seq.
- 12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(1)(b)(iii). As to the meaning of 'certificate of registry' see PARA 255 note 17. As to the power to dispense with the production of a certificate in certain circumstances see PARA 376.
- 13 I.e. one of the ports listed in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(2), Sch 2 Pt 1 (as to which see PARA 279 note 3): see reg 72(2).
- 14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(2). Any reference in any Act other than the Merchant Shipping Act 1995 or in any other instrument made under any such other Act to the port of registration of the ship or the port to which the ship belongs is to be construed as a reference to the port of choice required to be marked by reg 31 (see PARA 279), reg 53 (see PARA 316), reg 72 or reg 79 (see PARA 362): reg 122; Interpretation Act 1978 s 17(2)(b). As to the meaning of 'port of choice' see PARA 278 note 12.
- 15 I.e. in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(3), Sch 1 (as to which see PARA 278): see reg 72(3).
- 16 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(3).
- 17 I.e. the requirements of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(3), Sch 1 (as to which see PARA 278): see reg 72(4).
- 18 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(4).
- 19 I.e. in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 54 (as to which see PARA 315): see reg 72(5).
- 20 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(5).
- 21 I.e. on receipt of the documents specified in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(1) (see the text and notes 1-12): see reg 72(6).
- 22 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(6).
- 23 I.e. by virtue of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 8 (British connection and majority interest) (see PARA 259): see reg 72(7).

- 24 As to the meaning of 'British ship' under the Merchant Shipping Act 1995 see PARA 230.
- 25 As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 26 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(7).
- 27 le under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72: see reg 72(8).
- 28 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(8).
- 29 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72(9); Interpretation Act 1978 s 17(2)(b).

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343. Transfer within the register.

On application being made to him, the registrar¹ may, after provision of such information and evidence as he may require and if he is satisfied that the ship² is eligible to be registered in the new Part, transfer the registration of the ship to a different Part of the register³. All entries in the register relating to the ship (including any entries relating to mortgages⁴) will then be transferred⁵.

1 As to the meaning of 'registrar' for these purposes see PARA 255 note 2.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72A (added by SI 1998/2976). As to the meaning of 'register' for these purposes see PARA 255 note 1. The register maintained by the registrar is divided into various parts depending on the type of ship to be registered: see PARA 255.

4 As to mortgages of registered ships under the Merchant Shipping Act 1995 see PARA 318 et seq.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 72A (as added: see note 3).

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(x) Registration of Small Ships

344. Qualification and entitlement to be registered as a small ship on Part III of the register.

To be eligible to be registered on Part III of the register¹ a ship must be a small ship other than: (1) a fishing vessel²; or (2) a submersible vessel³.

1 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part III of the register, as mentioned in the text, is for small ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(c); and PARA 255. As to the meaning of 'ship' for these purposes see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 88(a). As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 88(b). For these purposes, 'submersible vessel' means any vessel used or designed to be used under the surface of any waters: reg 1(2).

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345. Persons qualified to be the owners of a small ship to be registered on Part III of the register.

The following persons are entitled to be the owners¹ of a small ship² to be registered on Part III of the register³:

- 640 (1) British citizens⁴ or non-United Kingdom⁵ nationals exercising their right of freedom of movement of workers or right of establishment⁶;
- 641 (2) British overseas territories citizens⁷;
- 642 (3) British Overseas citizens⁸;
- 643 (4) persons who under the British Nationality Act 1981 are British subjects⁹;
- 644 (5) persons who are British Nationals (Overseas)¹⁰; and
- 645 (6) Commonwealth citizens¹¹ not falling within heads (1) to (5) above¹².

1 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 89. As to the meaning of 'register' for these purposes see PARA 255 note 1. Part III of the register, as mentioned in the text, is for small ships: see reg 2(1)(c); and PARA 255.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 89(a)(i) (reg 89(a) substituted by SI 1998/2976). As to the meaning of 'British citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq.

5 As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 89(a)(ii) (as substituted: see note 4). As to the meaning of 'non-United Kingdom nationals exercising their right of freedom of movement of workers or right of establishment' see PARA 258 note 6.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 89(b) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). As to the meaning of 'British overseas territories citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 44-57.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 89(c). As to the meaning of 'British Overseas citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 58 et seq.

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 89(d). As to British subjects under the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 9, 66-67.

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 89(e); Interpretation Act 1978 s 17(2)(b). As to British Nationals (Overseas) within the meaning of the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 63-65.

11 As to who are Commonwealth citizens see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 11.

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 89(f).

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346. British connection of small ships.

A small ship¹ is entitled² to be registered if it is owned by one or more persons who are ordinarily resident in the United Kingdom³ and who are qualified⁴ to be the owners of a small ship⁵.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

2 Ie subject to the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 93(2) (power to refuse registration) (see PARA 349): see reg 90.

3 As to the meaning of 'United Kingdom' see PARA 17 note 3. As to ordinary residence see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 134; **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 58.

4 Ie by virtue of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 89 (see PARA 345): see reg 90.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 90.

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347. Disapplication of private law provisions to small ships.

The private law provisions for registered ships under the Merchant Shipping Act 1995¹ do not apply to small ships².

1 The Merchant Shipping Act 1995 s 16(1), Sch 1 (as to which see PARAS 237, 306, 318, 321, 323, 324, 328, 333, 335): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 91; Interpretation Act 1978 s 17(2)(b). As to the application of the Merchant Shipping Act 1995 Sch 1 see PARA 252.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 91; Interpretation Act 1978 s 17(2)(b). As to the meaning of 'ship' for these purposes see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

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348. Applications for registration of small ships.

Applications for registration¹ of small ships² must be in a form approved by the Secretary of State³ and must include⁴:

- 646 (1) a description of the ship⁵;
- 647 (2) the overall length⁶ of the ship⁷;
- 648 (3) the name of the ship⁸;
- 649 (4) the name and address of every owner⁹ of the ship¹⁰; and
- 650 (5) a declaration by every owner¹¹: (a) that he is eligible¹² to be the owner of a small ship¹³; and (b) that the ship is entitled¹⁴ to be registered on Part III of the register¹⁵.

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

3 As to the Secretary of State see PARA 38.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 92. As to the requirement to supply supplementary information or evidence where that provided on an application for registration is judged to be either not correct or insufficient see PARA 372. Documents not in the English language which are produced in support of any application under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138 must be accompanied by a translation: see PARA 369.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 92(a).

6 As to the meaning of 'overall length' see PARA 255 note 6.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 92(b).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 92(c).

9 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 92(d).

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 92(e). As to the power to dispense with declarations or other evidence otherwise required under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, see PARA 371.

12 *Ie* under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 89 (see PARA 345): see reg 92(e)(i).

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 92(e)(i).

14 *Ie* in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 90 (see PARA 346): see reg 92(e)(ii).

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 92(e)(ii). As to the meaning of 'register' for these purposes see PARA 255 note 1. Part III of the register, as mentioned in the text, is for small ships: see reg 2(1)(c); and PARA 255.

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349. Details to be registered in relation to small ships and refusal.

On receiving an application for registration¹ of a small ship² and being satisfied that the ship may properly be registered and that the name of the ship does not appear to him to be undesirable, the registrar³ must register the ship and must record in the register⁴ the following details⁵:

- 651 (1) the registration number of the ship⁶;
- 652 (2) the date of registration⁷;
- 653 (3) the date of expiry of registration⁸; and
- 654 (4) the details of the ship that are required to be included in any application for the registration of a small ship⁹.

Where the registrar is not satisfied that the ship is eligible to be registered, he may¹⁰ refuse to register the ship¹¹.

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6. As to applications for the registration of small ships see PARA 348.

3 As to the meaning of 'registrar' see PARA 255 note 2.

4 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part III of the register mentioned in the text is for small ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(c); and PARA 255.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 93(1).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 93(1)(a).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 93(1)(b).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 93(1)(c). The text refers to the date of expiry of registration in accordance with reg 96 (period of registration) (see PARA 352): see reg 93(1)(c).

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 93(1)(d). The text refers to the details specified in reg 92(a)-(d) (see PARA 348): see reg 93(1)(d).

10 le subject to the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 106 (requirement for supplementary information) (see PARA 372): see reg 93(2).

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 93(2).

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350. Certificate of registry of a small ship.

On the registration of a small ship¹, the registrar² must issue a certificate which must contain the details recorded in the register³, save for the address of any owner⁴.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6. As to applications for the registration of small ships see PARA 348.

2 As to the meaning of 'registrar' see PARA 255 note 2.

3 In accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 93 (see PARA 349); see reg 94. As to the meaning of 'register' for these purposes see PARA 255 note 1. Part III of the register mentioned in the text is for small ships: see reg 2(1)(c); and PARA 255.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 94. As to the meaning of 'owner' for these purposes see PARA 255 note 13.

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351. Marking of a small ship.

The person registered as owner¹ of the small ship² must ensure that³:

- 655 (1) within one month of the date on which the registration of the ship takes effect⁴, there is clearly painted on or affixed to a visible external surface of the ship the number of its registration preceded by the letters SSR⁵; and
- 656 (2) such marking is effectively maintained and renewed when necessary during the period of the registration of the ship⁶.

1 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6. As to applications for the registration of small ships see PARA 348.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 95.

4 As to the period of registration of a small ship see PARA 352.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 95(a).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 95(b).

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352. Period of registration of a small ship.

The registration of a small ship¹ is valid, unless duly terminated², for a period of five years beginning with the date of registration specified in the certificate of registry³ and expires at the end of that period unless it is duly renewed⁴.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6. As to applications for the registration of small ships see PARA 348.

2 Ie under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 96. As to termination of the registration of a small ship see PARA 356.

3 As to the certificate of registry of a small ship see PARA 350.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 96. The text refers to renewal under reg 97 (see PARA 353): see reg 96. As to the surrender of a certificate on the termination or expiry of registration see PARA 375.

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353. Renewal of registration of a small ship.

Application for renewal of registration of a small ship¹ may be made during the last three calendar months of the current registration period².

Application for renewal must be: (1) in writing³; and (2) accompanied by a declaration⁴ by every owner⁵: (a) that he is eligible⁶ to be the owner of a small ship⁷; and (b) that the ship is entitled⁸ to be registered on Part III of the register⁹.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6. As to applications for the registration of small ships see PARA 348.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 97(1). As to the period of registration of a small ship see PARA 352. As to the requirement to remeasure tonnage in certain circumstances before a ship's registration can be renewed see PARA 380.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 97(2).

4 I.e. a declaration as required by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 92(e) (see PARA 348): see reg 97(2). As to the power to dispense with declarations or other evidence otherwise required under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, see PARA 371.

5 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

6 I.e. under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 89 (see PARA 345): see regs 92(e)(i), 97(2).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, regs 92(e)(i), 97(2).

8 I.e. in accordance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 90 (see PARA 346): see regs 92(e)(ii), 97(2).

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, regs 92(e)(ii), 97(2). As to the meaning of 'register' for these purposes see PARA 255 note 1. Part III of the register, as mentioned in the text, is for small ships: see reg 2(1)(c); and PARA 255.

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354. Notification of changes of ownership etc of a registered small ship.

If at any time there occurs, in relation to a registered small ship¹:

- 657 (1) any change affecting the eligibility of the ship to be registered as a British ship²; or
- 658 (2) any change in relation to the address of the registered owner of the ship³; or
- 659 (3) any change in details relating to the ship⁴,

the registered owner of the ship must, as soon as practicable after the change occurs, notify the registrar⁵.

Notification so made must be in writing, must be signed by the registered owner and must specify the nature of the change and the name and the number of the ship⁶.

1 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 98(1). The text refers to a ship registered under Pt XI (regs 88-100) (see PARAS 344 et seq, 355 et seq): see reg 98(1). As to the meaning of 'ship' for these purposes see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6. As to applications for the registration of small ships see PARA 348.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 98(1)(a). As to the meaning of 'British ship' under the Merchant Shipping Act 1995 see PARA 230.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 98(1)(b). As to the meaning of 'owner' for these purposes see PARA 255 note 13.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 98(1)(c) (amended by SI 1998/2976). As to the requirement to remeasure tonnage in certain circumstances where a ship's details have changed see PARA 380.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 98(1). As to the meaning of 'registrar' see PARA 255 note 2.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 98(2).

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355. Supplementary evidence as to entitlement of small ship to registration.

Where it appears to the registrar¹ that there is any doubt as to the right of the small ship² to be registered on Part III of the register³, he may require satisfactory evidence to be produced by the person registered as the owner⁴ that the ship is entitled to be so registered⁵. Such evidence may include the production of the ship for inspection at a place and under such conditions as the registrar requires; and, if the necessary evidence is not provided within one month of being so required, he may terminate the registration of the ship⁶.

1 As to the meaning of 'registrar' see PARA 255 note 2.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4; and as to the meaning of 'small ship' for these purposes see PARA 255 note 6.

3 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part III of the register, as mentioned in the text, is for small ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(c); and PARA 255.

4 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 99(1).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 99(2) (amended by SI 1998/2976).

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356. Termination of registration of a small ship.

In the event of:

- 660 (1) a ship¹ ceasing to be a small ship²; or
- 661 (2) a change in the details recorded on the certificate of registry³,

the registration of the ship terminates⁴.

Where the registration of a ship is terminated, the certificate of registry ceases to have effect and must, within one month, be surrendered to the registrar⁵ by the person registered prior to the termination as the owner⁶ of the ship or, if he has died, by his legal personal representative⁷.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 100(1)(a). The text refers to a ship ceasing to be a ship to which Pt XI (regs 88-100) (see PARA 344 et seq) applies: see reg 100(1)(a). As to the meaning of 'small ship' for these purposes see PARA 255 note 6.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 100(1)(b). As to the certificate of registry of a small ship see PARA 350.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 100(1).

5 As to the meaning of 'registrar' see PARA 255 note 2.

6 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 100(2). As to the surrender of a certificate on the termination or expiry of registration see PARA 375.

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(xi) Ships Bareboat Chartered-in

357. Ships bareboat chartered-in by British charterers.

Any ship¹ which:

- 662 (1) is registered under the law of a country other than the United Kingdom² (the 'country of original registration')³;
- 663 (2) is chartered on bareboat charter terms⁴ to a charterer who is a person qualified to own British ships⁵; and
- 664 (3) is so chartered in circumstances where the prescribed conditions of entitlement to registration⁶, read with the requisite modifications⁷, are satisfied as respects the charterer and the ship⁸,

is entitled to be registered if an application for registration is duly made⁹.

Such registration of a ship¹⁰ remains in force, unless terminated earlier by virtue of registration regulations and subject to any suspension thereunder, until the end of the charter period¹¹ and then terminates by virtue of this provision¹².

The owner's obligation to take all reasonable steps to secure the termination of the ship's registration under the law of the country where it is already registered¹³ does not apply to a ship registered by virtue of the provisions governing ships bareboat chartered-in by British charterers¹⁴; but registration regulations must include provision for securing that the authority responsible for the registration of ships in the country of original registration is notified of the registration of the ship and of the termination¹⁵ of its registration¹⁶.

Accordingly, throughout the period for which a ship is registered virtue of the provisions governing ships bareboat chartered-in by British charterers¹⁷:

- 665 (a) the ship is entitled, as a British ship, to fly the British flag¹⁸;
- 666 (b) the Merchant Shipping Act 1995 applies to the ship as a British ship or as a registered ship as it applies to other British ships and to registered ships¹⁹; and
- 667 (c) any other enactment applicable to British ships or ships registered under that Act applies²⁰ to the ship as a British ship or as a registered ship²¹.

The private law provisions for registered ships²² do not apply to a ship registered by virtue of the provisions governing ships bareboat chartered-in by British charterers²³; and any matters or questions corresponding to those for which the private law provisions for registered ships make provision must be determined by reference to the law of the country of original registration²⁴.

Her Majesty may by Order in Council provide that any enactment falling within head (b) or (c) above²⁵: (i) is not to have effect²⁶ in relation to a ship registered by virtue of the provisions governing ships bareboat chartered-in by British charterers²⁷; or (ii) is so to have effect subject to such modifications, if any, as may be specified in the Order²⁸. No provision may, however, be made by such an Order in Council which would have the effect of relaxing the relevant requirements of the Merchant Shipping Act 1995²⁹ in their application to a ship to which the provisions governing ships bareboat chartered-in by British charterers apply³⁰. Such an Order in

Council may make such transitional, incidental or supplementary provision as appears to Her Majesty to be necessary or expedient, including provision divesting or providing for the divestment of ownership in the ship³¹.

- 1 As to the meaning of 'ship' see PARA 229.
- 2 As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 3 Merchant Shipping Act 1995 s 17(1)(a).
- 4 For these purposes, 'bareboat charter terms', in relation to a ship, means the hiring of the ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew: Merchant Shipping Act 1995 s 17(11). As to the meaning of 'master' see PARA 424.
- 5 Merchant Shipping Act 1995 s 17(1)(b). As to the meaning of 'British ship' see PARA 230; and as to the meaning of 'qualified owners' see PARA 230 note 11.
- 6 Ie prescribed under the Merchant Shipping Act 1995 s 9(2)(b) (see PARA 245): see s 17(1)(c).
- 7 For these purposes, 'requisite modifications' of those conditions are the substitution for any requirement to be satisfied by or as respects the owner of a ship of a corresponding requirement to be satisfied by or as respects the charterer of the ship: Merchant Shipping Act 1995 s 17(2).
- 8 Merchant Shipping Act 1995 s 17(1)(c).
- 9 Merchant Shipping Act 1995 s 17(3). The registrar may, nevertheless, if registration regulations so provide, refuse to register or terminate the registration of a ship by virtue of s 17 if, having regard to any relevant requirements of the Merchant Shipping Act 1995, he considers it would be inappropriate for the ship to be or, as the case may be, to remain registered: s 9(3) (applied by s 17(3)). As to the meaning of 'registration regulations' see PARA 247.
- 10 Ie a ship registered by virtue of the Merchant Shipping Act 1995 s 17: see s 17(4).
- 11 For these purposes, 'charter period' means the period during which the ship is chartered on bareboat charter terms: Merchant Shipping Act 1995 s 17(11).
- 12 Merchant Shipping Act 1995 s 17(4).
- 13 Ie the obligation contained in the Merchant Shipping Act 1995 s 9(5) (as to which see PARA 245): see s 17(5).
- 14 Ie registered by virtue of the Merchant Shipping Act 1995 s 17: see s 17(5).
- 15 Ie whether by virtue of the Merchant Shipping Act 1995 s 17(4) (see the text and notes 10-12) or by virtue of the registration regulations: see s 17(5).
- 16 Merchant Shipping Act 1995 s 17(5).
- 17 Merchant Shipping Act 1995 s 17(6). The text refers to a ship which is registered by virtue of s 17: see s 17(6).
- 18 Merchant Shipping Act 1995 s 17(6)(a).
- 19 Merchant Shipping Act 1995 s 17(6)(b). The application of the Merchant Shipping Act 1995 set out in s 17(6)(b) is subject to s 17(7), (8) (see the text and notes 22-28): see s 17(6)(b).
- 20 Ie subject to the Merchant Shipping Act 1995 s 17(8) (see the text and note 25): see s 17(6)(c).
- 21 Merchant Shipping Act 1995 s 17(6)(c).
- 22 As to the meaning of 'the private law provisions for registered ships' see PARA 237 note 3.
- 23 Ie by virtue of the Merchant Shipping Act 1995 s 17: see s 17(7).
- 24 Merchant Shipping Act 1995 s 17(7).

25 Merchant Shipping Act 1995 s 17(8). At the date at which this volume states the law, no such Order in Council had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Modification of Enactments) (Bareboat Charter Ships) Order 1994, SI 1994/774 (see PARAS 230, 255), has effect as if so made. As to the making of Orders in Council under the Merchant Shipping Act 1995 see PARA 41.

26 Ie in accordance with the Merchant Shipping Act 1995 s 17(6) (see the text and notes 17-21): see s 17(8)(a).

27 Merchant Shipping Act 1995 s 17(8)(a).

28 Merchant Shipping Act 1995 s 17(8)(b).

29 Ie as defined in the Merchant Shipping Act 1995 s 9(8) (see PARA 245 note 9): see s 17(9).

30 Merchant Shipping Act 1995 s 17(9).

31 Merchant Shipping Act 1995 s 17(10).

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358. Qualification and entitlement for registration of bareboat charter ships other than fishing vessels.

The persons qualified to be the owners of British ships¹ who charter a ship, other than a fishing vessel², on bareboat charter terms³ are qualified to register under the Merchant Shipping Act 1995⁴ a bareboat charter ship⁵.

Where the charterer is not resident in the United Kingdom⁶, he must appoint a representative person⁷.

1 Ie by virtue of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7(1) (see PARA 258): see reg 73. As to the meaning of 'owner' for these purposes see PARA 255 note 13; and as to the meaning of 'ship' for these purposes see PARA 255 note 4. As to the meaning of 'British ship' under the Merchant Shipping Act 1995 see PARA 230.

2 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

3 As to the meaning of 'bareboat charter terms' under the Merchant Shipping Act 1995 see PARA 357 note 4.

4 Ie under the Merchant Shipping Act 1995 s 17 (see PARA 357): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 73; Interpretation Act 1978 s 17(2)(b).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 73; Interpretation Act 1978 s 17(2)(b). As to the meaning of 'bareboat charter ship' see PARA 255 note 9.

6 As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the rules of domicile and residence generally see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 35 et seq.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 75. For these purposes, Pt V (regs 18, 19) (see PARAS 267-268) applies as if the charterer were the owner: see reg 75.

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359. Qualification and entitlement for registration of a fishing vessel as a bareboat charter ship.

The persons¹ who are qualified to be the owners² of fishing vessels³ registered on Part II of the register⁴ and who charter a fishing vessel on bareboat charter terms⁵ are eligible to register it under the Merchant Shipping Act 1995⁶ on Part IV of the register⁷.

However, a fishing vessel may not be registered on Part IV of the register unless it is managed, and its operations controlled and directed, from within the United Kingdom⁸; and where the charterer is not resident in the United Kingdom he must appoint a representative person⁹.

1 le the persons prescribed by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 12 (see PARA 262): see reg 74(1).

2 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

3 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

4 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part II of the register, as mentioned in the text, is for fishing vessels: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(b); and PARA 255. As to the status of any Part II certificate under sea fisheries legislation see PARA 377.

5 As to the meaning of 'bareboat charter terms' under the Merchant Shipping Act 1995 see PARA 357 note 4.

6 le under the Merchant Shipping Act 1995 s 17 (see PARA 357): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 74(1); Interpretation Act 1978 s 17(2)(b).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 74(1); Interpretation Act 1978 s 17(2)(b). Part IV of the register is for ships which are bareboat charter ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(d); and PARA 255. As to the meaning of 'ship' for these purposes see PARA 255 note 4; and as to the meaning of 'bareboat charter ship' see PARA 255 note 9.

The charterers of fishing vessels which are, or are to be, registered as bareboat charter ships may apply for dispensation from the eligibility requirements in accordance with reg 15 (as to which see PARA 264): reg 76.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 74(2). As to the meaning of 'United Kingdom' see PARA 17 note 3.

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 75. For these purposes, Pt V (regs 18, 19) (see PARAS 267-268) applies as if the charterer were the owner: see reg 75. As to the rules of domicile and residence generally see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 35 et seq.

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360. Applications for registration of a bareboat charter ship.

Every application for registration¹ of a bareboat charter ship² must be made to the registrar³ at the General Registry of Shipping and Seamen⁴. Every such application must be in a form approved by the Secretary of State⁵ and must be accompanied by⁶:

- 668 (1) a declaration of eligibility which must include⁷:
15
 - 43. (a) a declaration by every charterer setting out his qualification to register a bareboat charter ship⁸; and
 - 44. (b) in respect of fishing vessels⁹, a declaration that the management, and direction and control, of the ship, will be carried out from within the United Kingdom¹⁰;
- 16
669 (2) a copy of the charterparty showing¹¹:
17
 - 45. (a) the name of the ship¹²;
 - 46. (b) the name of the charterer or charterers and the name of the owner or owners of the ship¹³;
 - 47. (c) the date of the charterparty¹⁴;
 - 48. (d) the duration of the charterparty¹⁵;
- 18
670 (3) the certificate of registry¹⁶ (or other document) issued by the authority responsible for the registration of ships in the country of primary registration showing the ownership of the ship¹⁷; and
- 671 (4) where the charterer is a body corporate, the document or documents required by the provisions¹⁸ governing applications by such bodies¹⁹.

The requirement that ships before registration must be surveyed and measured²⁰ applies to the registration of a bareboat charter ship²¹.

The registrar may refuse to register any fishing vessel as a bareboat charter ship if he is not satisfied that there is in force in respect of the vessel any certificate required to be so in force by virtue of the Merchant Shipping Act 1995²².

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 As to the meaning of 'bareboat charter ship' see PARA 255 note 9; and as to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 As to the meaning of 'registrar' see PARA 255 note 2.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(1) (amended by SI 1999/3206). The Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 21 (the applicant) (see PARA 270) applies to Pt X (regs 73-87) (see PARAS 358 et seq, 361 et seq) as if the charterer were the owner: reg 77(2). As to the meaning of 'owner' for these purposes see PARA 255 note 13.

5 As to the Secretary of State see PARA 38.

- 6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(3). As to the requirement to supply supplementary information or evidence where that provided on an application for registration is judged to be either not correct or insufficient see PARA 372. Documents not in the English language which are produced in support of any application under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138 must be accompanied by a translation: see PARA 369.
- 7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(3)(a). As to the power to dispense with declarations or other evidence otherwise required under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, see PARA 371.
- 8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(3)(a)(i). As to the qualification and entitlement to register bareboat charter ships other than fishing vessels see PARA 358.
- 9 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.
- 10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(3)(a)(ii). As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the qualification and entitlement to register a fishing vessel as a bareboat charter ship see PARA 359.
- 11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(3)(b).
- 12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(3)(b)(i).
- 13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(3)(b)(ii).
- 14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(3)(b)(iii).
- 15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(3)(b)(iv).
- 16 As to the meaning of 'certificate of registry' see PARA 255 note 17.
- 17 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(3)(c). As to the details contained in a certificate of registry for a bareboat charter ship generally see PARA 301. As to the power to dispense with the production of a certificate in certain circumstances see PARA 376.
- 18 Ie by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 24 (see PARA 273): see reg 77(3)(d).
- 19 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(3)(d).
- 20 Ie the requirements of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29 (see PARA 276): see reg 77(4).
- 21 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(4). The text refers to the application of reg 29 to Pt X (see PARAS 358 et seq, 361 et seq) generally: see reg 77(4).
- 22 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(5); Interpretation Act 1978 s 17(2)(b). The text refers to any certificate required to be so in force by virtue of the Merchant Shipping Act 1995 s 125 (see PARA 607): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 77(5); Interpretation Act 1978 s 17(2)(b).

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361. Names of bareboat charter ship.

On making an application for registration¹ of a bareboat charter ship², the applicant³ must propose a name which the ship is to be called while so registered⁴.

If the registrar⁵ is satisfied that the name complies with the requirements relating to the approval of names⁶, he must approve the name⁷.

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 As to the meaning of 'bareboat charter ship' see PARA 255 note 9; and as to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 The Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 21 (the applicant) (see PARA 270) applies to Pt X (regs 73-87) (see PARAS 358 et seq, 362 et seq) as if the charterer were the owner: see reg 77(2); and PARA 360. As to the meaning of 'owner' for these purposes see PARA 255 note 13.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 78(1).

5 As to the meaning of 'registrar' see PARA 255 note 2.

6 I.e. that the name is in compliance with the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 78(2), Sch 1 (see PARA 278): see reg 78(2).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 78(2).

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362. Allocation of identifying number to bareboat charter ship; port of choice and port numbers.

On making application for registration¹ of a bareboat charter ship², the applicant³ must specify one of the listed ports⁴ which it is intended shall be the port of choice⁵.

Where the application is made in respect of a fishing vessel⁶ and the registrar⁷ is satisfied that the vessel is eligible to be registered as a bareboat charter ship, he must⁸: (1) allocate a port number⁹; and (2) allocate an identifying number¹⁰, whether or not the vessel already has a number allocated by its primary register¹¹.

In the case of any other ship, the registrar may allocate an identifying number, whether or not the ship already has a number allocated by its primary register¹².

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 As to the meaning of 'bareboat charter ship' see PARA 255 note 9; and as to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 The Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 21 (the applicant) (see PARA 270) applies to Pt X (regs 73-87) (see PARAS 358 et seq, 363 et seq) as if the charterer were the owner: see reg 77(2); and PARA 360. As to the meaning of 'owner' for these purposes see PARA 255 note 13.

4 ie one of the ports listed in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 79(1), Sch 2 Pt 1 or Pt 2 (see PARA 279), as is appropriate: see reg 79(1).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 79(1). As to the meaning of 'port of choice' see PARA 278 note 12. As to the allocation of port of choice see PARA 279. Any reference in any Act other than the Merchant Shipping Act 1995 or in any other instrument made under any such other Act to the port of registration of the ship or the port to which the ship belongs is to be construed as a reference to the port of choice required to be marked by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 31 (see PARA 279), reg 53 (see PARA 316), reg 72 (see PARA 342) or reg 79: reg 122; Interpretation Act 1978 s 17(2)(b).

6 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

7 As to the meaning of 'registrar' see PARA 255 note 2.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 79(2) (reg 79(2), (3) substituted by SI 1999/3206).

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 79(2)(a) (as substituted: see note 8). As to the meaning of 'port number' see PARA 279 note 8.

10 For these purposes, 'identifying number' means, where the registrar has allocated a bareboat charter ship a number under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 79(2) (b) (see head (2) in the text) or reg 79(3) (see the text and note 12), that number or, in any other case, the unique number allocated to a bareboat charter ship for identification purposes by its primary register: reg 1(2) (definition substituted by SI 1999/3206). As to the meaning of 'primary register' see PARA 295 note 9.

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 79(2)(b) (as substituted: see note 8).

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 79(3) (as substituted: see note 8).

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363. Marking of bareboat charter ship; inspection etc.

On being satisfied that the ship¹ is eligible for registration² and on production of any required certificate for survey³, the registrar⁴ must issue a carving and marking note⁵.

On receipt of a carving and marking note, the charterer must⁶:

- 672 (1) where the ship is not already so marked, cause it to be marked with its name⁷, its port of choice⁸, and (in respect of a fishing vessel⁹) its port number¹⁰; and
- 673 (2) where the ship is not already so carved, cause it to be carved with its identifying number¹¹ and the number denoting its tonnage¹²,

in accordance with the prescribed requirements for carving and marking¹³.

The statutory provisions relating to inspection of marks¹⁴ and to the cancellation of a carving and marking note¹⁵ apply as if any reference in them to the owner¹⁶ were a reference to the charterer¹⁷.

1 le the bareboat charter ship. As to the meaning of 'bareboat charter ship' see PARA 255 note 9; and as to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the qualification and entitlement to register bareboat charter ships other than fishing vessels see PARA 358; and as to the qualification and entitlement to register a fishing vessel as a bareboat charter ship see PARA 359.

3 le any certificate for survey required under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29 (survey and measurement of ship) (see PARA 276); see reg 80(1).

4 As to the meaning of 'registrar' see PARA 255 note 2.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 80(1).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 80(2).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 80(2)(a)(i).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 80(2)(a)(ii). As to the meaning of 'port of choice' see PARA 278 note 12. As to the allocation of port of choice see PARA 279; and see PARA 362 note 5.

9 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 80(2)(a)(iii) (amended by SI 1999/3206). As to the meaning of 'port number' see PARA 279 note 8.

11 As to the meaning of 'identifying number' see PARA 362 note 10.

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 80(2)(b).

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 80(2). The text refers to the requirements for carving and marking prescribed by reg 80(2), Sch 3 (as to which see PARA 281 et seq): see reg 80(2).

14 le the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 33 (see PARA 286): see reg 81 (amended by SI 1994/541).

15 le the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 35 (see PARA 288): see reg 81 (as amended: see note 14).

16 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

17 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 81 (as amended: see note 14).

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364. Registration of bareboat charter ship.

Where the registrar¹ is satisfied in respect of an application for registration² of a bareboat charter ship³:

- 674 (1) that the ship has been duly carved and marked⁴; and
- 675 (2) that, where required, the appropriate certificate of survey has been provided⁵; and
- 676 (3) that the other requirements preliminary to registration have been complied with⁶,

he must enter in the register⁷ the details that are prescribed to be so entered⁸.

Upon registering a ship, the registrar must:

- 677 (a) issue and send to the charterer a certificate of bareboat charter registry⁹ containing the required particulars¹⁰; and
- 678 (b) retain in his possession a copy of the charter, a copy of any certificate of survey and all declarations of eligibility¹¹ and (if applicable) any declarations required under the provisions¹² relating to applications made by bodies corporate¹³.

Notwithstanding that a ship is otherwise entitled to be registered, the registrar may refuse to register it if, taking into account any requirement of the Merchant Shipping Act 1995, including any instrument made thereunder, relating to the condition of the ship or its equipment so far as it is relevant to its safety or to any risk of pollution or to the safety, health and welfare of persons employed or engaged in any capacity on board the ship, he considers that it would be inappropriate for the ship to be registered¹⁴.

1 As to the meaning of 'registrar' see PARA 255 note 2.

2 As to the meaning of 'application for registration' see PARA 269 note 1.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 82(1). As to the meaning of 'bareboat charter ship' see PARA 255 note 9; and as to the meaning of 'ship' for these purposes see PARA 255 note 4.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 82(1)(a). As to the carving and marking of bareboat charter ships see PARA 363.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 82(1)(b). As to the survey and measurement of ships, including the ascertainment and certification of tonnage for registration purposes, see PARA 276.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 82(1)(c).

7 As to the meaning of 'register' for these purposes see PARA 255 note 1. Part IV of the register is for ships which are bareboat charter ships: see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 2(1)(d); and PARA 255.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 82(1). The text refers to the details prescribed in reg 82(1), Sch 4 (see PARA 290 et seq): see reg 82(1).

9 As to the meanings of 'certificate of bareboat charter' and 'certificate of registry' see PARA 255 note 17. As to the issue of duplicate certificates of registry in certain circumstances see PARA 373.

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 82(2) (amended by SI 1998/2976). The text refers to the particulars set out in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 82(2), Sch 5 (as to which see PARAS 299-301): see reg 82(2) (as so amended).

11 As to declarations of eligibility relating to applications for the registration of bareboat charter ships see PARA 360.

12 Ie the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 24 (see PARA 273): see reg 82(3).

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 82(3).

14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 82(4); Interpretation Act 1978 s 17(2)(b).

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365. Period of registration of bareboat charter ship; renewal.

The registration of a bareboat charter ship¹ expires²:

- 679 (1) on the expiry of the charter period³; or
- 680 (2) at the end of a period of five years beginning with the date of registration specified in the certificate of bareboat charter registry⁴,

whichever is the earlier⁵.

Three months before the expiry of the registration period, the registrar⁶ must issue to the charterer of the ship a renewal notice⁷.

Application for renewal of registration may be made during the last three calendar months of the current registration period⁸.

Applications for renewal must be in a form approved by the Secretary of State⁹ and must be accompanied by a declaration of eligibility¹⁰ and by the certificate of bareboat charter registry¹¹.

1 As to the meaning of 'bareboat charter ship' see PARA 255 note 9; and as to the meaning of 'ship' for these purposes see PARA 255 note 4. As to the requirements for registration of a bareboat charter ship see PARA 357 et seq.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 83(1).

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 83(1)(a). As to the meaning of 'charter period' for these purposes under the Merchant Shipping Act 1995 see PARA 357 note 11.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 83(1)(b) (amended by SI 1998/2976). As to the meanings of 'certificate of bareboat charter' and 'certificate of registry' see PARA 255 note 17.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 83(1). As to the surrender of a certificate on the termination or expiry of registration see PARA 375.

6 As to the meaning of 'registrar' see PARA 255 note 2.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 83(2).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 83(3). As to the requirement to remeasure tonnage in certain circumstances before a ship's registration can be renewed see PARA 380.

9 As to the Secretary of State see PARA 38.

10 As to declarations of eligibility relating to applications for the registration of bareboat charter ships see PARA 360. As to the power to dispense with declarations or other evidence otherwise required under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, see PARA 371.

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 83(4) (amended by SI 1998/2976).

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366. Notification of changes occurring in relation to bareboat charter ship.

If at any time there occurs, in relation to a bareboat charter ship¹, any change affecting the eligibility of the ship to be registered², the charterer of the ship must, as soon as practicable after the change occurs, notify the registrar³. Such notification must be made in writing, must be signed by the charterer and must specify the nature of the change and the name and the identifying number⁴ of the ship⁵. Any person who contravenes the requirement to notify⁶ is guilty of an offence⁷.

The statutory provisions relating to change in the registered particulars of a ship⁸, change of name⁹, transfer to a port of choice¹⁰ and re-marking of a ship¹¹ apply to bareboat charter ships¹² as if any reference in those provisions to the owner¹³ were a reference to the charterer¹⁴.

1 As to the meaning of 'bareboat charter ship' see PARA 255 note 9; and as to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the qualification and entitlement to register bareboat charter ships other than fishing vessels see PARA 358; and as to the qualification and entitlement to register a fishing vessel as a bareboat charter ship see PARA 359.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 84(1). As to the meaning of 'registrar' see PARA 255 note 2. As to the requirement to remeasure tonnage in certain circumstances where a ship's details have been changed see PARA 380.

4 As to the meaning of 'identifying number' see PARA 362 note 10.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 84(2).

6 If any person who contravenes the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 84(1) (see the text and notes 1-3): see reg 84(3).

7 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 84(3); and PARA 1119.

8 If the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51 (see PARA 314): see reg 85 (amended by SI 1994/541). As to offences relating to contraventions of reg 51 (including reg 51 as so applied) see PARA 1119.

9 If the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 52 (see PARA 315): see reg 85 (as amended: see note 8).

10 If the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 53 (see PARA 316): see reg 85 (as amended: see note 8).

11 If the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 54 (see PARA 315): see reg 85 (as amended: see note 8).

12 If apply to the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, Pt X (regs 73-87) (see PARAS 358 et seq, 367 et seq): see reg 85 (as amended: see note 8).

13 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 85 (as amended: see note 8).

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367. Notification to foreign registries by the registrar.

The registrar¹ must notify the responsible authority for registration of ships² in the country of primary registration when³:

- 681 (1) the ship has been registered as a bareboat charter ship⁴ on the British register⁵; or
- 682 (2) the ship's registration has closed by reason of the expiry of the certificate of registry⁶; or
- 683 (3) the ship's registration has been closed by the registrar⁷.

1 As to the meaning of 'registrar' see PARA 255 note 2.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 86.

4 As to the meaning of 'bareboat charter ship' see PARA 255 note 9.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 86(a). As to the meaning of 'register' for these purposes see PARA 255 note 1.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 86(b). The text refers to closure under reg 83(1)(b) (see PARA 365): see reg 86(b). As to the meaning of 'certificate of registry' see PARA 255 note 17.

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 86(c). The text refers to closure by reason of reg 87 (see PARA 368): see reg 86(c).

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368. Closure of bareboat charter ship's registration by the registrar.

The registrar¹ may² close the registration of a bareboat charter ship³:

- 684 (1) on application by the charterer⁴;
- 685 (2) on the ship no longer being eligible to be registered⁵;
- 686 (3) on the ship being destroyed (which includes, but is not limited to, shipwreck, demolition, fire and sinking)⁶;
- 687 (4) if, taking into account any requirement of the Merchant Shipping Act 1995, including any instrument made thereunder, relating to the condition of the ship or its equipment so far as relevant to its safety or to any risk of pollution or to the safety, health and welfare of persons employed or engaged in any capacity on board the ship, he considers that it would be inappropriate for the ship to remain registered⁷;
- 688 (5) if the bareboat charter ship is a fishing vessel⁸ which requires a licence to fish but at the time of registration did not have such a licence and has not acquired such a licence within six months of the issue of its certificate of bareboat charter registry⁹;
- 689 (6) where the charterer of a fishing vessel fails to respond to the registrar within 15 days of a request from him to supply information concerning details on the register¹⁰;
- 690 (7) where the charterer of a fishing vessel supplies information requested by the registrar, but that information is either false or incorrect or is reasonably considered by the registrar to be insufficient¹¹;
- 691 (8) where¹² the charterer is required to notify the registrar of any changes affecting the ship's eligibility to be registered, and has not done so¹³;
- 692 (9) where¹⁴ a person is required to make an application for any change in the registered particulars of a ship or in the name or address of a charterer to be recorded in the register, and has not done so¹⁵; or
- 693 (10) where a fishing vessel certificate¹⁶ has expired¹⁷.

On closure of a ship's registration under any of heads (1) to (10) above, the charterer must forthwith surrender to the registrar the certificate of bareboat charter registry for cancellation¹⁸.

However, where it appears to the registrar that head (2) above, or any of heads (4) to (10) above, applies, he may serve notice on the owner or managing owner¹⁹, or on any charterer, manager or operator of the ship requiring him to produce, within 30 days, evidence (which may include a declaration of British connection²⁰) sufficient to satisfy him that the ship is eligible to remain on the register²¹. If, at the expiry of that period of 30 days, the registrar is not so satisfied, he may either: (a) extend the notice and ask for further information or evidence²²; or (b) serve a final notice which closes the ship's registration, such closure to take effect seven days after the service of that notice²³. Where a ship's registration is so terminated, the registrar must issue a closure transcript²⁴ and the owner of the ship must forthwith surrender its certificate of registry²⁵.

1 As to the meaning of 'registrar' see PARA 255 note 2.

2 le subject to the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 101 (service of notices) (see the text and notes 19-25): see reg 87(1).

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 87(1). As to the meaning of 'bareboat charter ship' see PARA 255 note 9; and as to the meaning of 'ship' for these purposes see PARA 255 note 4. As to the registration of a bareboat charter ship see PARA 357 et seq.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 87(1)(a).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 87(1)(b). As to the qualification and entitlement to register bareboat charter ships other than fishing vessels see PARA 358; and as to the qualification and entitlement to register a fishing vessel as a bareboat charter ship see PARA 359.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 87(1)(c).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 87(1)(d); Interpretation Act 1978 s 17(2)(b).

8 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 87(1)(e) (added by SI 1998/2976). As to the meanings of 'certificate of bareboat charter' and 'certificate of registry' see PARA 255 note 17.

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 87(1)(f) (reg 87(1)(f)-(j) added by SI 1999/3206). As to the meaning of 'register' for these purposes see PARA 255 note 1.

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 87(1)(g) (as added: see note 10).

12 le under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 84 (as to which see PARA 366): see reg 87(1)(h) (as added: see note 10).

13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 87(1)(h) (as added: see note 10).

14 le under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51 (as to which see PARA 314), as applied by reg 85 (as to which see PARA 366): see reg 56(1)(i) (as added: see note 10).

15 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 87(1)(i) (as added: see note 10).

16 As to the meaning of 'fishing vessel certificate' see PARA 317 note 22.

17 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 87(1)(j) (as added: see note 10).

18 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 87(2) (amended by SI 1998/2976).

19 As to the meaning of 'owner' for these purposes see PARA 255 note 13. The term 'managing owner' is used in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 23 (appointment of managing owner where ship has more than one owner) (as to which see PARA 271), as well as in reg 34, but it is not defined; however, see PARA 238.

Where the registrar serves a notice under reg 101 on the owner of a vessel in respect of which a mortgage is registered, the registrar must send a copy of that notice to the mortgagee at the address recorded for him in the register: reg 102.

20 As to the meaning of 'declaration of British connection' under the Merchant Shipping Act 1995 see PARA 245 note 3. As to the power to dispense with declarations or other evidence otherwise required under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, see PARA 371.

21 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 101(1) (amended by SI 1998/2976; SI 1999/3206).

22 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 101(2)(a).

23 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 101(2)(b).

- 24 As to the meaning of 'closure transcript' see PARA 317 note 33.
- 25 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 101(3).

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(xii) Miscellaneous Provisions relating to Registration

A. DOCUMENTS ETC

369. Documents not in the English language to be accompanied by a translation.

Any document which is not in the English language and is produced in support of any application for registration¹ of a ship² must be accompanied by a notarised translation of the document in the English language³.

1 As to the meaning of 'application for registration' see PARA 269 note 1.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 103.

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370. Witnessing of documents.

Where the signature on any document made pursuant to the provisions governing the registration of ships¹ is required to be witnessed, any witness to the signature must be a person of full age and must not be the spouse of the signatory².

¹ le made under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 104. As to the meaning of 'ship' for these purposes see PARA 255 note 4.

² Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 104.

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371. Dispensing with declarations or evidence otherwise required.

Where, under the provisions governing the registration of ships¹:

- 694 (1) any person is required to make a declaration on behalf of himself or any body corporate, but is unable to do so and can satisfy the registrar² that it is due to reasonable cause, the registrar may, on such terms as he thinks fit, dispense with the declaration³; or
- 695 (2) any evidence is required to be produced to the registrar, but such evidence is unable to be produced and the registrar is satisfied that it is due to reasonable cause, the registrar may, on production of such other evidence as he considers appropriate, dispense with the evidence⁴.

1 le under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 105. As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the meaning of 'registrar' see PARA 255 note 2.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 105(a).

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 105(b).

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372. Requirement for supplementary information.

Where the registrar¹ is not satisfied by the information provided on an application for registration² of a ship³ that the ship is eligible for registration, or that any of the particulars or other information supplied is correct or sufficient, he may require such supplementary information or evidence as he considers appropriate⁴.

1 As to the meaning of 'registrar' see PARA 255 note 2.

2 As to the meaning of 'application for registration' see PARA 269 note 1.

3 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 106 (substituted by SI 1999/3206).

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B. CERTIFICATES OF REGISTRY

373. Duplicate certificates.

If it is shown to the satisfaction of the registrar¹ that the certificate of registry² for a ship³ has been lost, stolen or destroyed or has become defaced or illegible (the 'event'), he may issue to the owner⁴ a duplicate of that certificate, which must be marked as such, and is of the same effect as the original⁵. Where a duplicate certificate of registry is issued, the original, if then available or if subsequently found or recovered, must be forthwith surrendered to the registrar⁶.

If:

- 696 (1) the port where the ship is at the time of the event or, as the case may be, where it first arrives after the event, is not in the United Kingdom⁷; and
- 697 (2) the master of the ship or some other person having knowledge of the facts of the case makes a declaration before the appropriate person⁸ as to the loss, theft, destruction, defacement or illegibility of the certificate⁹,

the appropriate person must notify the registrar¹⁰. On being notified of the event and being satisfied that the ship is entitled to be issued with a duplicate certificate, the registrar must¹¹:

- 698 (a) fax to the appropriate person a copy of the duplicate certificate which the appropriate person must indorse with a statement of the circumstances under which it is granted¹²; or
- 699 (b) where there are no fax facilities, authorise the appropriate person to issue a provisional certificate so indorsed¹³.

The faxed certificate or the provisional certificate must, within ten days of the ship arriving in a port in the United Kingdom, be surrendered to the registrar, and a duplicate certificate must be issued¹⁴.

Any person who fails, without reasonable cause, to surrender a certificate of registry when required to do so by these provisions¹⁵ commits an offence¹⁶.

1 As to the meaning of 'registrar' see PARA 255 note 2.

2 As to the meaning of 'certificate of registry' see PARA 255 note 17.

3 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

4 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 108(1). As to related offences see PARA 1121.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 108(2).

7 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 108(3)(a). As to the meaning of 'United Kingdom' see PARA 17 note 3.

- 8 As to the meaning of 'appropriate person' for these purposes see PARA 337 note 6.
- 9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 108(3)(b).
- 10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 108(3).
- 11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 108(4).
- 12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 108(4)(a).
- 13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 108(4)(b) (amended by SI 1994/541).
- 14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 108(5).
- 15 le when required to do so by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 108: see reg 114(4).
- 16 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(4); and PARA 1122.

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374. Custody of certificate.

A certificate of registry¹ must be used only for lawful navigation of the ship² and is not subject to detention by reason only of any title, lien, charge or interest whatever had or claimed by any owner³, mortgagee or other person to, on or in the ship⁴.

If any person refuses, without reasonable cause, to surrender the certificate of registry when in his possession or under his control to the person entitled to its custody for the purposes of the lawful navigation of the ship, or to the registrar⁵, or an officer of revenue and customs⁶ or any other person entitled by law to demand such delivery, he is guilty of an offence⁷.

1 As to the meaning of 'certificate of registry' see PARA 255 note 17.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 109(1).

5 As to the meaning of 'registrar' see PARA 255 note 2.

6 As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

7 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, regs 109(2), 114(4), (7); and PARA 1122.

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375. Surrender of certificate on termination or expiry of registration.

On the termination, whether by expiration of the registration period or otherwise, of a ship's registration¹, the certificate of registry² must be returned by the owner³ or charterer to the registrar⁴ for cancellation⁵.

Any person who fails, without reasonable cause, to return a certificate of registry when required to do so by these provisions⁶ commits an offence⁷.

1 As to the termination of a ship's registration see PARAS 317, 356, 368. As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the meaning of 'certificate of registry' see PARA 255 note 17.

3 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

4 As to the meaning of 'registrar' see PARA 255 note 2.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 110.

6 Ie when required to do so by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 110: see reg 114(4).

7 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(4); and PARA 1122.

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376. Dispensing with production of certificate.

Where a certificate of registry¹ is required² to accompany any application and it is shown to the satisfaction of the registrar³ that for any reasonable cause (which includes, but is not limited to, the ship⁴ being in a port outside the United Kingdom⁵, or the certificate being needed for an imminent voyage, at the time the application was made) the certificate cannot be produced, the registrar may, subject to such conditions as he thinks fit, dispense with its production⁶.

1 As to the meaning of 'certificate of registry' see PARA 255 note 17.

2 Ie required by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 111.

3 As to the meaning of 'registrar' see PARA 255 note 2.

4 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

5 As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 111.

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377. Status of a Part II certificate under sea fisheries legislation.

A certificate of registry¹ or a certificate of bareboat registry² of a fishing vessel³ (including a valid temporary registration certificate) is to be a 'document relating to a boat' for the purposes of the Sea Fisheries Act 1968⁴ and as such must at all times be carried on board the vessel⁵.

1 As to the meaning of 'certificate of registry' see PARA 255 note 17.

2 As to the meaning of 'certificate of bareboat registry' see PARA 255 note 17.

3 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

4 le for the purposes of the Sea Fisheries Act 1968 s 8(3)(b) (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1002): see the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 112 (amended by SI 1999/3206).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 112 (as amended: see note 4).

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C. REMOVAL OF MARKS

378. Removal of marks on cessation of registration.

If a ship's registration is terminated¹, whether by expiration of the registration period² or otherwise, the prescribed marking³ must be removed from the ship and written confirmation of that removal must be sent to the registrar⁴.

1 As to registration see PARA 254 et seq; and as to the termination of a ship's registration see PARAS 317, 356, 368. As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As to the registration period of a ship see PARAS 296, 352, 365.

3 I.e. the marking prescribed under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138 (as to which specifically see PARAS 280 et seq, 351, 363): see reg 113.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 113. As to the meaning of 'registrar' see PARA 255 note 2.

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D. FEES PAYABLE TO REGISTRAR

379. Fees prescribed in respect of any service or other transaction.

Where a fee is prescribed in respect of any service or other transaction to be carried out¹, the registrar² is not required to carry out the service or other transaction unless the appropriate fee has been paid³.

1 le pursuant to the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 107.

2 As to the meaning of 'registrar' see PARA 255 note 2.

3 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 107.

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E. RE-MEASUREMENT OF TONNAGE

380. Re-measurement of tonnage required when changes in registration occur.

No transfer of ownership of a ship or shares in a ship¹, no renewal of registration², nor change of details of the ship or its owners³ may be registered in respect of any ship which⁴:

700 (1) is required to have its tonnage measured in accordance with the International Convention on Tonnage Measurement of Ships 1969⁵; and

701 (2) for which no such measurement has been undertaken and registered⁶,

until such re-measurement takes place and where necessary the certificate of survey has been lodged with the registrar⁷ for amendment of the register⁸. However, this requirement does not apply where the transfer, or change of details, arises by reason of the death of an owner of a ship, or a share in a ship⁹.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4. As to the transfer of ownership of a ship see PARA 306 et seq.

2 As to the renewal of registration of a ship see PARAS 304 et seq, 353, 365.

3 As to changes in the details of a ship or its owners see PARAS 313 et seq, 354, 366. As to the meaning of 'owner' for these purposes see PARA 255 note 13.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 113A(1) (reg 113A added by SI 1998/2976).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 113A(1)(a) (as added: see note 4). The International Convention on Tonnage Measurement of Ships (London, 23 June to 23 December 1969; TS 50 (1982); Cmnd 8716) is implemented by the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510 (as to which see PARA 248 et seq): see PARA 8.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 113A(1)(b) (as added: see note 4).

7 As to the meaning of 'registrar' see PARA 255 note 2.

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 113A(1) (as added: see note 4). As to the meaning of 'register' for these purposes see PARA 255 note 1.

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 113A(2) (as added: see note 4).

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4. HOVERCRAFT

(1) IN GENERAL

381. Meaning of 'hovercraft' for the purposes of the Hovercraft Act 1968.

For the purposes of the Hovercraft Act 1968, 'hovercraft' means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle¹.

¹ Hovercraft Act 1968 s 4(1).

Except as otherwise provided by or under the Hovercraft Act 1968, or an enactment passed before 26 August 1968 (ie the date of the passing of the Hovercraft Act 1968), a hovercraft is not to be treated as being a ship, aircraft or motor vehicle for the purposes of any such enactment or any instrument having effect by virtue of any such enactment: s 4(3). For these purposes, 'enactment' includes an enactment contained in a local Act and an enactment contained in any Act passed after and in the same session as the Hovercraft Act 1968 (s 4(1)); and any reference in the Hovercraft Act 1968 to any enactment or instrument is a reference to it as amended, and includes a reference to it as applied, by or under any other enactment (s 4(2)).

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382. Power to make Orders in Council under the Hovercraft Act 1968.

Her Majesty may by Order in Council make such provision as she considers expedient¹:

- 702 (1) with respect to the registration of hovercraft²;
- 703 (2) for securing the safety of hovercraft and persons and property in hovercraft and at hoverports³, and for preventing hovercraft from endangering other persons and property⁴;
- 704 (3) for prohibiting or restricting the use of hovercraft unless the prescribed⁵ certificates as to fitness are in force and the prescribed conditions as to maintenance and repair are satisfied with respect to them⁶;
- 705 (4) for prohibiting persons from taking charge or otherwise acting as members of the crew of a hovercraft or from engaging in or being employed in connection with the maintenance or repair of hovercraft, in such capacities as may be prescribed, unless the prescribed conditions as to qualifications and other matters are satisfied with respect to those persons⁷;
- 706 (5) with respect to the investigation of accidents involving hovercraft⁸;
- 707 (6) for regulating the noise and vibration which may be caused by hovercraft⁹;
- 708 (7) for providing that no action is to lie, and no proceedings in pursuance of Part III of the Environmental Protection Act 1990¹⁰ are to be brought, in respect of nuisance by reason only of noise and vibration caused by hovercraft in respect of which the requirements imposed in pursuance of head (6) above are complied with¹¹;
- 709 (8) for applying in relation to hovercraft or to persons, things or places connected with hovercraft¹²:

19

- 49. (a) any enactment¹³ or instrument¹⁴ relating to ships, aircraft, motor vehicles or other means of transport or to persons, things, places connected therewith¹⁵;
- 50. (b) any rules of law relating to ships or persons, things or places connected with ships (other than rules relating to maritime liens)¹⁶;

20

- 710 and, without prejudice to the generality of the above provisions, for providing that any enactment (other than an enactment mentioned above) is to have effect as if references in it, in whatever terms, to ships, aircraft or motor vehicles or activities connected therewith included references to hovercraft or activities connected with hovercraft¹⁷;
- 711 (9) for applying the following enactments, and any instrument made under them, in relation to the following matters respectively¹⁸, that is to say:

21

- 51. (a) in relation to the carriage by persons and their baggage by hovercraft, the Carriage by Air Act 1961¹⁹ and the Carriage by Air (Supplementary Provisions) Act 1962²⁰;
- 52. (b) in relation to the carriage of property by hovercraft (except baggage in relation to which provisions of the Acts specified in head (9)(a) above are applied) the Carriage of Goods by Sea Act 1971²¹ and certain provisions of the Merchant Shipping Act 1995²² which limit liability, so far as those provisions relate to property on board a ship²³;

53. (c) in relation to loss of life or personal injury connected with a hovercraft which is caused to persons not carried by the hovercraft, in relation to the loss or damage connected with a hovercraft which is caused to property not carried by the hovercraft and in relation to infringements of rights through acts or omissions connected with a hovercraft, certain provisions of the Merchant Shipping Act 1995²⁴ which limit liability²⁵;
- 22
- 712 (10) for substituting references to hovercraft for references in any enactment or instrument to vehicles designed to be supported on a cushion of air²⁶;
- 713 (11) for repealing the provisions of any enactment or instrument²⁷, in so far as it appears to Her Majesty that those provisions are not required having regard to any provision made or proposed to be made by virtue of the power to make Orders in Council under the Hovercraft Act 1968²⁸;
- 714 (12) with respect to the application of the Order to the Crown and the extra-territorial operation of any provision made by or under the Order²⁹;
- 715 (13) for the extension of any provisions of the Order, with or without modifications³⁰, to Northern Ireland, any of the Channel Islands, the Isle of Man, any colony³¹ and any country or place outside Her Majesty's dominions³² in which for the time being Her Majesty has jurisdiction³³;
- 716 (14) for imposing penalties in respect of any contravention³⁴ of a provision made by or under the Order, not exceeding, in respect of any one contravention, a fine of £400 on summary conviction and imprisonment for 12 months and a fine on conviction on indictment³⁵;
- 717 (15) for detaining any hovercraft in order to secure compliance with any provision made by or under the Order or any hovercraft in respect of which such a contravention is suspected to have occurred³⁶; and
- 718 (16) for requiring the payment of fees in respect of any matter relating to hovercraft which is specified in the Order and for determining with the approval of the Treasury the amount of any such fee or the manner in which that amount is to be determined³⁷.

Nothing in any of heads (1) to (16) above is to be construed as prejudicing the generality of any other of those heads; and in particular head (14) above does not prejudice head (8) above³⁸.

An Order in Council so made may³⁹:

- 719 (i) make different provision for different circumstances or for hovercraft of different descriptions⁴⁰;
- 720 (ii) provide for exemptions from any of the provisions of the Order⁴¹;
- 721 (iii) provide for the delegation of functions exercisable by virtue of the Order⁴²;
- 722 (iv) include such incidental, supplemental and consequential provisions as appear to Her Majesty to be expedient for the purposes of the Order⁴³;
- 723 (v) authorise the making of regulations and other instruments for any of the above purposes, except the purposes of heads (7) to (11) above, and apply the Statutory Instruments Act 1946⁴⁴ to instruments made under the Order⁴⁵;
- 724 (vi) provide that any enactment, instrument or rule of law applied by the Order shall have effect as so applied subject to such modifications as may be specified in the Order⁴⁶; and
- 725 (vii) be revoked or varied by a subsequent Order so made⁴⁷.

No recommendation may be made to Her Majesty in Council to make such an Order containing provisions authorised by heads (6) to (11) above unless a draft of the Order has been approved by a resolution of each House of Parliament⁴⁸; and any other Order in Council under the above provisions, except an Order extending only to territory (other than Northern Ireland) which is

mentioned in head (13) above, is subject to annulment in pursuance of a resolution of either House of Parliament⁴⁹.

1 Hovercraft Act 1968 s 1(1).

2 Hovercraft Act 1968 s 1(1)(a). As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. In exercise of the power so conferred, Her Majesty has made the Hovercraft (General) Order 1972, SI 1972/674 (as to which see PARA 387 et seq).

3 For these purposes, 'hoverport' means any area, whether on land or elsewhere, which is designed, equipped, set apart or commonly used for affording facilities for the arrival and departure of hovercraft: Hovercraft Act 1968 s 4(1).

4 Hovercraft Act 1968 s 1(1)(b).

5 For these purposes, 'prescribed' means prescribed by an Order in Council under the Hovercraft Act 1968 s 1, or by an instrument made under such an Order: s 4(1).

6 Hovercraft Act 1968 s 1(1)(c).

7 Hovercraft Act 1968 s 1(1)(d).

8 Hovercraft Act 1968 s 1(1)(e).

9 Hovercraft Act 1968 s 1(1)(f).

10 In the Environmental Protection Act 1990 Pt III (ss 79-84) (as to which see **NUISANCE** vol 78 (2010) PARA 156 et seq): see the Hovercraft Act 1968 s 1(1)(g) (amended by the Control of Pollution Act 1974 s 108, Sch 3 para 26; the Environmental Protection Act 1990 s 162(1), Sch 15 para 9; the Environment Act 1995 s 120(3), Sch 24).

11 Hovercraft Act 1968 s 1(1)(g) (as amended: see note 10).

12 Hovercraft Act 1968 s 1(1)(h).

13 As to the meaning of 'enactment' see PARA 381 note 1.

14 In other than an enactment or an instrument made under an enactment mentioned in the Hovercraft Act 1968 s 1(1)(i) (see head (9) in the text) or s 2(1) (see PARA 383) or an enactment contained in the Supreme Court Act 1981 ss 20-24 (Admiralty jurisdiction of the High Court) (see PARA 79 et seq): see the Hovercraft Act 1968 s 1(1)(h)(i) (amended by the Supreme Court Act 1981 s 152(1), Sch 5). As from a day to be appointed, the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales and the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 accordingly: see the Constitutional Reform Act 2005 s 59, Sch 11 para 1; and **COURTS** vol 10 (Reissue) PARA 601 et seq. However, at the date at which this volume states the law, no such day had been appointed.

15 Hovercraft Act 1968 s 1(1)(h)(i) (as amended: see note 14).

16 Hovercraft Act 1968 s 1(1)(h)(ii). As to maritime liens see PARA 1014 et seq.

17 Hovercraft Act 1968 s 1(1)(h). In exercise of the power so conferred, Her Majesty has made the Hovercraft (Civil Liability) Order 1986, SI 1986/1305: see PARA 386. The enactments and instruments with respect to which provision may be made by Order in Council under the Hovercraft Act 1968 s 1(1)(h) include: (1) the Merchant Shipping Act 1995, except Pt I (ss 1-7) (British ships) (see PARA 230 et seq) and Pt II (ss 8-23) (registration) (see PARA 245 et seq), and any instrument made thereunder (s 310); and (2) the Prevention of Oil Pollution Act 1971 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 348 et seq) and any instrument made thereunder (s 31).

18 Hovercraft Act 1968 s 1(1)(i).

19 As to the Carriage by Air Act 1961 see **CARRIAGE AND CARRIERS**.

20 Hovercraft Act 1968 s 1(1)(i)(i). As to the Carriage by Air (Supplementary Provisions) Act 1962 see **CARRIAGE AND CARRIERS**.

21 As to the Carriage of Goods by Sea Act 1971 see **CARRIAGE AND CARRIERS**.

22 le the Merchant Shipping Act 1995 s 185 (as to which see **PARA** 1042) and s 186 (as to which see **PARA** 1059); see the Hovercraft Act 1968 s 1(1)(i)(ii) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 42; the Merchant Shipping and Maritime Security Act 1997 s 29(1), Sch 6 para 1).

23 Hovercraft Act 1968 s 1(1)(i)(ii) (as amended: see note 22); Carriage of Goods by Sea Act 1971 s 6(3).

24 le the Merchant Shipping Act 1995 s 185 (as to which see **PARA** 1042) and s 186 (as to which see **PARA** 1059); see the Hovercraft Act 1968 s 1(1)(i)(iii) (amended by the Merchant Shipping Act 1995 Sch 13 para 42).

25 Hovercraft Act 1968 s 1(1)(i)(iii) (as amended: see note 24).

26 Hovercraft Act 1968 s 1(1)(j).

27 le including the provisions of the Hovercraft Act 1968 s 3, Schedule (as to which see **PARA** 384): see s 1(1)(k).

28 Hovercraft Act 1968 s 1(1)(k). The text refers to any provision made or proposed to be made by virtue of s 1: see s 1(1)(k).

29 Hovercraft Act 1968 s 1(1)(l).

30 For these purposes, 'modifications' includes additions, omissions and amendments: Hovercraft Act 1968 s 4(1).

31 As to the meaning of 'colony' see **STATUTES** vol 44(1) (Reissue) **PARA** 1383.

32 As to Her Majesty's dominions see **COMMONWEALTH** vol 13 (2009) **PARA** 707.

33 Hovercraft Act 1968 s 1(1)(m).

34 For these purposes, 'contravention' includes failure to comply: Hovercraft Act 1968 s 4(1).

35 Hovercraft Act 1968 s 1(1)(n).

36 Hovercraft Act 1968 s 1(1)(o).

37 Hovercraft Act 1968 s 1(1)(p). In exercise of the powers conferred on him by the Hovercraft (General) Order 1972, SI 1972/674, art 35 (see **PARA** 417), the Secretary of State made the Hovercraft (Fees) Regulations 1997, SI 1997/320 (see **PARA** 417). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) **PARAS** 512-517.

38 Hovercraft Act 1968 s 1(2).

39 Hovercraft Act 1968 s 1(3). The text refers to an order made under s 1: see s 1(3). In exercise of the power so conferred, Her Majesty has made the Hovercraft (Application of Enactments) Order 1972, SI 1972/971 (amended by SI 1978/1913; SI 1979/1309; SI 1982/715; SI 1983/769; SI 1989/1350; SI 1990/2594; SI 1995/1299; SI 1998/1256); and the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350 (amended by SI 1990/2594). See eg **PARA** 856 et seq.

40 Hovercraft Act 1968 s 1(3)(a).

41 Hovercraft Act 1968 s 1(3)(b).

42 Hovercraft Act 1968 s 1(3)(c).

43 Hovercraft Act 1968 s 1(3)(d).

44 As to the Statutory Instruments Act 1946 see **STATUTES** vol 44(1) (Reissue) **PARA** 1501 et seq.

45 Hovercraft Act 1968 s 1(3)(e).

46 Hovercraft Act 1968 s 1(3)(f).

47 Hovercraft Act 1968 s 1(3)(g). The text refers to a subsequent order made under s 1: see s 1(3)(g).

48 Hovercraft Act 1968 s 1(4).

49 Hovercraft Act 1968 s 1(4).

UPDATE

382 Power to make Orders in Council under the Hovercraft Act 1968

NOTE 14--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/4. HOVERCRAFT/(1) IN GENERAL/383. Admiralty jurisdiction.

383. Admiralty jurisdiction.

Hovercraft¹ are subject to the Admiralty jurisdiction of the High Court². The law relating to maritime liens³ applies⁴ in relation to hovercraft and property connected with hovercraft as it applies in relation to ships and property connected with ships, notwithstanding that the hovercraft in question is on land at any relevant time⁵.

Her Majesty may, however, by Order in Council⁶ provide that the statutory provisions relating to Admiralty jurisdiction and the law relating to maritime liens⁷ are not to apply in relation to hovercraft in such circumstances as may be specified in the Order, or are to have effect, in all circumstances involving hovercraft or such circumstances involving hovercraft as may be specified in the Order, subject to such modifications as may be so specified⁸.

1 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381.

2 Ie by virtue of the fact that, in the Supreme Court Act 1981 ss 20-24 (Admiralty jurisdiction of the High Court) (see PARA 79 et seq), 'ship' includes a hovercraft: see s 24(1); and PARA 85 note 7. There is no longer any jurisdiction in the county court in Admiralty matters: see the Civil Courts (Amendment) (No 2) Order 1999, SI 1999/1011 (which amended the Civil Courts Order 1983, SI 1983/713, so that, as from 26 April 1999, all Admiralty proceedings must be commenced in the High Court); and PARA 209. As to the jurisdiction of the High Court generally see **COURTS** vol 10 (Reissue) PARA 606 et seq; and as to county courts generally see **COURTS** vol 10 (Reissue) PARA 701 et seq.

3 As to maritime liens see PARA 1014 et seq.

4 Ie subject to the Hovercraft Act 1968 s 2(3) (see the text and notes 6-8): see s 2(2).

5 Hovercraft Act 1968 s 2(2).

6 The provisions of the Hovercraft Act 1968 s 1(3) (Orders in Council) (see PARA 382) apply to an order under s 2(3) as they apply to an Order under s 1 but as if s 1(3)(c), (e), (f) (see PARA 382) was omitted: see s 2(3). No recommendation may be made to Her Majesty in Council to make an Order under s 2 unless a draft of the Order has been approved by a resolution of each House of Parliament: s 2(4).

7 Ie the enactments mentioned in the Hovercraft Act 1968 s 2(1) and the law mentioned in s 2(2) (see the text and notes 3-5) as extended: see s 2(3). Section 2(3) has effect as if the reference to the enactments mentioned in s 2(1) as extended by s 2(1) included a reference to the Supreme Court Act 1981 ss 20-24 (Admiralty jurisdiction of the High Court) (see PARA 79 et seq): Hovercraft Act 1968 s 2(3A) (added by the Supreme Court Act 1981 Sch 5). As from a day to be appointed, the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales and the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 accordingly: see the Constitutional Reform Act 2005 s 59, Sch 11 para 1; and **COURTS** vol 10 (Reissue) PARA 601 et seq. However, at the date at which this volume states the law, no such day had been appointed.

8 Hovercraft Act 1968 s 2(3). At the date at which this volume states the law, no such Order in Council had been made.

UPDATE

383 Admiralty jurisdiction

NOTE 7--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/4. HOVERCRAFT/(1) IN GENERAL/384. Application of certain enactments to hovercraft.

384. Application of certain enactments to hovercraft.

Certain enactments¹ have effect subject to specified modifications² which provide for the application of those enactments in relation to hovercraft³.

¹ I.e. the Dockyard Port Regulation Act 1865, the Explosives Act 1875, the Petroleum (Consolidation) Act 1928, the Docking and Nicking of Horses Act 1949, the Prevention of Damage by Pests Act 1949, and the Pests Act 1954; see the Hovercraft Act 1968 s 3, Schedule (Schedule amended by the Immigration Act 1971 s 34(1), Sch 6; the Misuse of Drugs Act 1971 s 39(2), Sch 6; the British Nationality Act 1981 s 52(8), Sch 9 para 1(f); the Road Traffic Regulation Act 1984 s 146, Sch 14; and the Statute Law (Repeals) Act 1993).

² I.e. the modifications specified in the Hovercraft Act 1968 Schedule (see note 1): see s 3. As to the meaning of 'modifications' see PARA 382 note 30.

³ Hovercraft Act 1968 s 3. As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. See also **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 897 (application of provisions to hovercraft), PARA 943 (control of movement of hovercraft), PARA 1070 (power to regulate small craft); **MORTGAGE** vol 77 (2010) PARA 248 (mortgages of aircraft and hovercraft); and **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 515 (use of ships, aircraft, hovercraft and vehicles which would otherwise infringe a patent).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/4. HOVERCRAFT/(1) IN GENERAL/385. Financial provisions.

385. Financial provisions.

Any expenses incurred or sums received under the Hovercraft Act 1968 by any Minister of the Crown or government department must be defrayed out of moneys provided by Parliament or paid into the Consolidated Fund, as the case may be¹.

Any increase attributable to the Hovercraft Act 1968 in the sums which, under any other enactment, are payable out of or into the Consolidated Fund or the National Loans Fund or out of moneys provided by Parliament must be paid out of or into that Fund or out of moneys so provided, as the case may be².

1 Hovercraft Act 1968 s 6(1) (amended by the Post Office Act 1969 s 141, Sch 11 Pt II). As to the Consolidated Fund generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

2 Hovercraft Act 1968 s 6(2). As to the National Loans Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 727 et seq.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/4. HOVERCRAFT/(2) CIVIL LIABILITY/386. Application of general provisions relating to civil liability.

(2) CIVIL LIABILITY

386. Application of general provisions relating to civil liability.

The statutory provisions relating to the carriage of passengers and baggage by air¹ apply, with modifications², in relation to the carriage of passengers and their baggage by hovercraft³ as they apply in relation to the carriage of passengers and their baggage by air⁴.

The statutory provisions relating to goods on board or carried by ships⁵ apply, with modifications⁶, to the carriage of goods, other than passengers' baggage, by hovercraft as they apply in relation to goods on board or carried by ship⁷.

The statutory provisions relating to the overall limitation of liability of shipowners⁸ apply, with modifications⁹, in relation to¹⁰:

- 726 (1) loss of life or personal injury connected with a hovercraft which is caused to persons not carried by the hovercraft¹¹;
- 727 (2) loss or damage connected with a hovercraft which is caused to property¹²; and
- 728 (3) infringements of rights through acts or omissions connected with a hovercraft¹³,

if and only if at the time of the incident causing the damage the hovercraft was on or over navigable water or on or over the foreshore, or was proceeding between navigable water and a hoverport, or was on or over a hoverport either preparing for or after such transit¹⁴; but this provision does not apply to claims in respect of loss or damage to passengers' baggage carried by the hovercraft or in respect of loss of or damage to crew's¹⁵ property carried by the hovercraft¹⁶.

The provisions relating to ships as to division of loss, damages for personal injuries, rights of contribution and apportionment of salvage¹⁷ apply, with modifications¹⁸, to hovercraft¹⁹.

1 Ie the Carriage by Air Act 1961 and the Carriage by Air (Supplementary Provisions) Act 1962 (see **CARRIAGE AND CARRIERS**): see the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 3.

2 Ie the modifications set out in the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 3, Sch 1 (Sch 1 amended by SI 1987/1835): see the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 3.

3 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see **PARA 381**.

4 Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 3. The enactments applied by the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, apply with the further modifications that: (1) a vehicle and its contents are not to be treated as baggage (art 5(a)); and (2) subject thereto, any property of which the passenger takes charge himself is to be treated as baggage (art 5(b)). For convenience of reference, the enactments applied by art 3, art 4 (see the text and notes 5-7) and art 6 (see the text and notes 8-16) are set out in art 10, Sch 4 (amended by SI 1987/1835; prospectively amended by SI 1998/1257) with the modifications made in them by the Hovercraft (Civil Liability) Order 1986, SI 1986/1305: art 10.

5 Ie the Carriage of Goods by Sea Act 1971 (see **CARRIAGE AND CARRIERS**): see the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 4.

6 le the modifications set out in the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 4, Sch 2: see art 4.

7 Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 4. See also note 4.

8 le the Merchant Shipping Act 1995 ss 185(1), (2), 186(1)-(3), (5), Sch 7 Pt II (paras 1-13) (see PARA 1042 et seq): see the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 6(1); Interpretation Act 1978 s 17(2)(b).

9 le the modifications set out in the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 6(1), Sch 3 (prospectively amended by SI 1998/1257): see the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 6(1). See also note 4. The provisions of art 6, Sch 3 apply in relation to Her Majesty's hovercraft as they apply in relation to other hovercraft (art 8(1)); and the Crown Proceedings Act 1947 ss 6, 30 (repealed) (see now the Merchant Shipping Act 1995 ss 190, 192(1); and PARAS 1063, 1065) apply in the case of hovercraft as they apply in the case of vessels (Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 8(2)).

10 Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 6(1).

11 Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 6(1)(a).

12 Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 6(1)(b).

13 Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 6(1)(c).

14 Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 6(1).

15 For these purposes, 'crew' means a person who is on board a hovercraft or employed in connection with that hovercraft or with salvage operations, if he was so on board or employed under a contract of service governed by the law of any part of the United Kingdom; and 'salvage operations' has the same meaning as in the Merchant Shipping Act 1995 (see PARA 893) as modified by the Hovercraft (Civil Liability) Order 1986, SI 1986/1305: see art 6(2); Interpretation Act 1978 s 17(2)(b). As to the meaning of 'United Kingdom' see PARA 17 note 3.

16 Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 6(2).

17 le the provisions of the Merchant Shipping Act 1995 ss 187-190 (see PARA 1060 et seq): see the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 7; Interpretation Act 1978 s 17(2)(b).

18 le references to ships in the Merchant Shipping Act 1995 ss 187-190 (see PARA 1060 et seq) are to be read as if they included references to hovercraft: see the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 7; Interpretation Act 1978 s 17(2)(b).

19 Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 7; Interpretation Act 1978 s 17(2)(b).

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(3) REGISTRATION ETC

(i) In general

387. Application of general provisions to hovercraft.

The general provisions relating to the registration, certification, maintenance and operation of hovercraft¹ apply to hovercraft² which are used³:

- 729 (1) wholly or partly on or over the sea or navigable waters⁴; or
- 730 (2) on or over land to which the public has access or non-navigable waters to which the public has access⁵; or
- 731 (3) elsewhere for the carriage of passengers⁶ for reward⁷.

This is subject to the proviso that those same general provisions do not apply to hovertrains⁸, nor do they prejudice the operation of the provisions of the Road Traffic Act 1988⁹ which govern the application of road traffic legislation to hovercraft or hover vehicles¹⁰.

1 le the Hovercraft (General) Order 1972, SI 1972/674 (see PARA 388 et seq): see art 2. As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381.

2 le subject to the proviso that the Hovercraft (General) Order 1972, SI 1972/674, Pt II (arts 7A-17) (certification and maintenance) (see PARA 396 et seq) and Pt III (arts 17A-24) (duties of operator and captain) (see PARA 402 et seq) do not apply to hovercraft to which the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARA 614 et seq) apply: see the Hovercraft (General) Order 1972, SI 1972/674, art 7A (cited in PARA 396), art 17A (cited in PARA 402); Interpretation Act 1978 s 17(2)(b).

3 Hovercraft (General) Order 1972, SI 1972/674, art 2.

4 Hovercraft (General) Order 1972, SI 1972/674, art 2(i). For these purposes, 'navigable water' means any water which is in fact navigable by ships or vessels, whether or not the tide ebbs and flows there, and whether or not there is a public right of navigation in that water: art 3(1).

5 Hovercraft (General) Order 1972, SI 1972/674, art 2(ii).

6 For these purposes, 'passenger' means any person carried in a hovercraft, except a person employed or engaged in any capacity on board the hovercraft on the business of the hovercraft: Hovercraft (General) Order 1972, SI 1972/674, art 3(1).

7 Hovercraft (General) Order 1972, SI 1972/674, art 2(iii).

8 Hovercraft (General) Order 1972, SI 1972/674, art 2(a). For these purposes, 'hovertrains' means hovercraft which are at all times guided by tracks, rails or guides fixed to the ground: art 3(1).

9 le the Road Traffic Act 1988 s 188 (application of the Road Traffic Regulation Act 1984 and the Road Traffic Act 1988 to hovercraft or hover vehicles) (as to which see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 218): see the Hovercraft (General) Order 1972, SI 1972/674, art 2(b); Interpretation Act 1978 s 17(2)(b).

10 Hovercraft (General) Order 1972, SI 1972/674, art 2(b); Interpretation Act 1978 s 17(2)(b).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/4. HOVERCRAFT/(3) REGISTRATION ETC/(i) In general/388. Crown application.

388. Crown application.

The general provisions relating to the registration, certification, maintenance and operation of hovercraft¹ apply to or in relation to hovercraft belonging to or exclusively employed in the service of Her Majesty as they apply to or in relation to other hovercraft; and, for the purposes of such application, the government department or other authority for the time being responsible on behalf of Her Majesty for the operational management of the hovercraft is deemed to be the operator² of the hovercraft and, in the case of a hovercraft belonging to Her Majesty, to be the owner of the interest of Her Majesty in the hovercraft³.

Where a military hovercraft⁴ is operated by a civilian and is not commanded by a person who is acting in the course of his duty as a member of any of Her Majesty's naval or military or air forces or as a member of a visiting force or international headquarters⁵, that civilian is bound by the usual duties of a captain⁶ on the occasion of that journey⁷.

Nothing in the provisions governing Crown application⁸ renders liable to any penalty⁹ any department or other authority responsible on behalf of Her Majesty for the management of the hovercraft¹⁰.

1 I.e. the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387, 389 et seq): see art 34(1). As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381.

2 For these purposes, 'operator', in relation to a hovercraft, means the person for the time being having the management of the hovercraft: Hovercraft (General) Order 1972, SI 1972/674, art 3(1).

3 Hovercraft (General) Order 1972, SI 1972/674, art 34(1).

4 For these purposes, 'military hovercraft' means the naval, military or air force hovercraft of any country and includes: (1) any hovercraft being constructed for the naval, military or air force of any country under a contract entered into by the Secretary of State; and (2) any hovercraft in respect of which there is in force a certificate issued by the Secretary of State that the hovercraft is to be treated for the purposes of the Hovercraft (General) Order 1972, SI 1972/674, as a military hovercraft: art 3(1). As to the Secretary of State see PARA 38.

5 As to visiting forces see **ARMED FORCES** vol 2(2) (Reissue) PARA 140; and as to international headquarters see **ARMED FORCES** vol 2(2) (Reissue) PARA 150.

6 For these purposes, 'captain' means the person who is designated by the operator to be in charge of a hovercraft during any journey, or, failing such designation, the person who is for the time being lawfully in charge of the hovercraft: Hovercraft (General) Order 1972, SI 1972/674, art 3(1). As to the duties of a captain see PARA 405.

7 Hovercraft (General) Order 1972, SI 1972/674, art 34(3). Save as provided in art 34(3), nothing in the Hovercraft (General) Order 1972, SI 1972/674, applies to or in relation to any military hovercraft: art 34(2).

8 I.e. nothing in the Hovercraft (General) Order 1972, SI 1972/674, art 34: see art 34(1) proviso.

9 As to penalties for contravention see PARA 1123.

10 Hovercraft (General) Order 1972, SI 1972/674, art 34(1) proviso.

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389. Extra-territorial effect.

Except where the context otherwise requires, the general provisions relating to the registration, certification, maintenance and operation of hovercraft¹ apply as follows²:

- 732 (1) in so far as they apply, whether by express reference or otherwise, to hovercraft registered in the United Kingdom³, they apply to such hovercraft wherever they may be⁴;
- 733 (2) in so far as they so apply to other hovercraft, they apply to such hovercraft when they are within the United Kingdom⁵;
- 734 (3) in so far as they prohibit, require or regulate, whether by express reference or otherwise, the doing of anything by persons in, or by any of the crew of, any hovercraft registered in the United Kingdom, they apply to such persons and crew, wherever they may be⁶; and
- 735 (4) in so far as they prohibit, require or regulate, whether by express reference or otherwise, the doing of anything in relation to any hovercraft registered in the United Kingdom by other persons, they apply, where such persons are British subjects⁷, to them wherever they may be⁸.

However, nothing in the provisions governing the extra-territorial effect of the general hovercraft provisions⁹ is to be construed as extending the criminal liability of certain persons who are not citizens of the United Kingdom and colonies¹⁰ and whose liability is otherwise limited¹¹.

1 I.e. the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387, 388, 390 et seq): see art 36(1). As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

2 Hovercraft (General) Order 1972, SI 1972/674, art 36(1).

3 As to the registration of hovercraft in the United Kingdom see PARA 390 et seq. For these purposes, 'United Kingdom' includes the territorial waters adjacent to the United Kingdom: Hovercraft (General) Order 1972, SI 1972/674, art 3(1). As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the extent of the territorial and non-territorial sea, the baselines used for delimitation, and associated rights see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 121 et seq.

4 Hovercraft (General) Order 1972, SI 1972/674, art 36(1)(a).

5 Hovercraft (General) Order 1972, SI 1972/674, art 36(1)(b).

6 Hovercraft (General) Order 1972, SI 1972/674, art 36(1)(c).

7 As to British subjects under the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 9, 66-67.

8 Hovercraft (General) Order 1972, SI 1972/674, art 36(1)(d).

9 I.e. nothing in the Hovercraft (General) Order 1972, SI 1972/674, art 36: see art 36(2).

10 As to citizenship of the United Kingdom and colonies see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 16-21. As to the meaning of 'colony' see **STATUTES** vol 44(1) (Reissue) PARA 1383.

11 Hovercraft (General) Order 1972, SI 1972/674, art 36(2). The text refers to the provision that nothing in art 36 is to be construed as extending to make any person guilty of an offence in any case in which it is provided by the British Nationality Act 1948 s 3(1) (which limits the criminal liability of certain persons who are not citizens of the United Kingdom and Colonies) (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 82), that that person is to be guilty of an offence: see the Hovercraft (General) Order 1972, SI 1972/674, art 36(2). For the purposes of the British Nationality Act 1948, references to the colonies include references to the Channel Islands and the Isle of Man: see s 33(1).

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(ii) Registration

390. Necessity for registration.

If used in the United Kingdom¹, a hovercraft² must be registered in the United Kingdom³, unless⁴:

- 736 (1) it is registered in some other country⁵; or
- 737 (2) an unqualified person⁶ holds a legal or beneficial interest in the hovercraft by way of ownership or share therein and the Secretary of State⁷ consents to its use unregistered in the United Kingdom, subject to such conditions as he thinks fit⁸.

A hovercraft may also be used unregistered in the United Kingdom if it has an unladen weight⁹ of less than 1,000 kilograms and is not used for reward¹⁰.

1 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3.

2 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

3 It is subject to the Hovercraft (General) Order 1972, SI 1972/674, art 7 (hovercraft registered outside the United Kingdom) (see PARA 395): see art 4.

4 Hovercraft (General) Order 1972, SI 1972/674, art 4.

5 Hovercraft (General) Order 1972, SI 1972/674, art 4(a). As to hovercraft registered outside the United Kingdom see PARA 395; and as to penalties for contravention see PARA 1123.

6 For these purposes, 'unqualified person' means a person not qualified in accordance with the Hovercraft (General) Order 1972, SI 1972/674, art 5(3) (see PARA 391) to be the holder of a legal or beneficial interest by way of ownership in the hovercraft: art 3(1). 'Beneficial interest' includes interests arising under contract and other equitable interests: art 3(1).

7 As to the Secretary of State see PARA 38.

8 Hovercraft (General) Order 1972, SI 1972/674, art 4(b).

9 For these purposes, 'unladen weight', in relation to a hovercraft, means the weight of a hovercraft ready for use, excluding the weight of usable fuel, occupants, baggage, cargo, stores, buoyant life-saving equipment, portable fire-fighting equipment, portable emergency equipment and non-permanent ballast: Hovercraft (General) Order 1972, SI 1972/674, art 3(1).

10 Hovercraft (General) Order 1972, SI 1972/674, art 4 proviso (amended by SI 1996/3173).

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391. Procedure for registration of hovercraft in the United Kingdom.

The Secretary of State¹ is the authority for registration of hovercraft² in the United Kingdom³.

A hovercraft may not be registered or continue to be registered in the United Kingdom if it appears to the Secretary of State that⁴:

- 738 (1) the hovercraft is registered outside the United Kingdom and that such registration does not cease by operation of law upon the hovercraft being registered in the United Kingdom⁵; or
- 739 (2) an unqualified person⁶ holds any legal or beneficial interest⁷ in the hovercraft by way of ownership or any share therein⁸.

Only the following persons and no others are qualified to be the holder of a legal or beneficial interest by way of ownership in a hovercraft registered in the United Kingdom or a share therein⁹:

- 740 (a) the Crown in right of Her Majesty's government in the United Kingdom¹⁰;
- 741 (b) persons ordinarily resident in the United Kingdom¹¹;
- 742 (c) bodies incorporated in the United Kingdom and having their principal place of business in the United Kingdom¹²;
- 743 (d) firms carrying on business in Scotland¹³.

However, if an unqualified person holds a legal or beneficial interest by way of ownership in a hovercraft or a share in it, or is a charterer by demise of it, the Secretary of State may register the hovercraft in the United Kingdom subject to such conditions as he thinks fit¹⁴; and he may at any time cancel the registration of the hovercraft so registered¹⁵.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

3 Hovercraft (General) Order 1972, SI 1972/674, art 5(1). As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3.

4 Hovercraft (General) Order 1972, SI 1972/674, art 5(2).

5 Hovercraft (General) Order 1972, SI 1972/674, art 5(2)(a). As to hovercraft registered outside the United Kingdom see PARA 395; and as to penalties for contravention see PARA 1123.

6 As to the meaning of 'unqualified person' see PARA 390 note 6.

7 As to the meaning of 'beneficial interest' see PARA 390 note 6. For the purposes of the Hovercraft (General) Order 1972, SI 1972/674, art 5, references to an interest in a hovercraft do not include references to an interest in a hovercraft to which a person is entitled only by virtue of his membership of a hovercraft club: art 5(12).

8 Hovercraft (General) Order 1972, SI 1972/674, art 5(2)(b).

- 9 Hovercraft (General) Order 1972, SI 1972/674, art 5(3).
- 10 Hovercraft (General) Order 1972, SI 1972/674, art 5(3)(a).
- 11 Hovercraft (General) Order 1972, SI 1972/674, art 5(3)(b). As to ordinary residence see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 134; **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 58.
- 12 Hovercraft (General) Order 1972, SI 1972/674, art 5(3)(c). As to a person's place of business see **COMPANIES** vol 14 (2009) PARA 122.
- 13 Hovercraft (General) Order 1972, SI 1972/674, art 5(3)(d). For these purposes, 'firm' has the same meaning as in the Partnership Act 1890 (see **PARTNERSHIP** vol 79 (2008) PARA 1): see the Hovercraft (General) Order 1972, SI 1972/674, art 5(3).
- 14 Hovercraft (General) Order 1972, SI 1972/674, art 5(4).
- 15 Hovercraft (General) Order 1972, SI 1972/674, art 5(4).

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392. Application for the registration of a hovercraft in the United Kingdom.

Application for the registration of a hovercraft¹ in the United Kingdom² must be made in writing to the Secretary of State³ and must include or be accompanied by such particulars and evidence relating to the hovercraft and the ownership and chartering of it as he may require to enable him to determine whether the hovercraft may properly be registered in the United Kingdom and to issue a certificate of registration⁴.

Upon receiving an application for the registration of a hovercraft in the United Kingdom and being satisfied that the hovercraft may properly be so registered, the Secretary of State must (or, in the case of an application by an unqualified person⁵, may) register the hovercraft, wherever it may be, and he must include in the register the following particulars⁶:

- 744 (1) the number of the certificate⁷;
- 745 (2) the registration mark⁸ assigned to the hovercraft by the Secretary of State⁹;
- 746 (3) the name of the constructor of the hovercraft, its type and constructor's number¹⁰;
- 747 (4) the name and address of every person who holds a legal interest¹¹ in the hovercraft by way of ownership or a share in it (or, in the case of a hire-purchase agreement¹², the name and address of the hirer)¹³; and
- 748 (5) in cases where the Secretary of State has allowed registration of a hovercraft in which an unqualified person holds a legal or beneficial interest¹⁴ by way of ownership in a hovercraft or a share in it, or is a charterer by demise of it¹⁵, an indication that it is so registered, and an indication as to whether the person in whose name it is registered is the owner or charterer by demise¹⁶.

The Secretary of State must furnish to the person in whose name the hovercraft is registered (the 'registered owner') a certificate of registration which must include the above particulars and the date on which the certificate was issued¹⁷.

If at any time after the hovercraft has been registered in the United Kingdom an unqualified person becomes the holder of a legal or beneficial interest in the hovercraft by way of ownership or a share in it, the registration of the hovercraft thereupon becomes void¹⁸ and the certificate of registration must forthwith be returned by the registered owner to the Secretary of State for cancellation¹⁹.

1 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

2 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391.

3 As to the Secretary of State see PARA 38.

4 Hovercraft (General) Order 1972, SI 1972/974, art 5(5). The text refers to a certificate of registration issued as mentioned in art 5(7) (see the text and note 17): see art 5(5).

5 le an application under Hovercraft (General) Order 1972, SI 1972/674, art 5(4) (see PARA 391): see art 5(6).
As to the meaning of 'unqualified person' see PARA 390 note 6.

6 Hovercraft (General) Order 1972, SI 1972/674, art 5(6).

7 Hovercraft (General) Order 1972, SI 1972/674, art 5(6)(a).

8 As to registration marks see PARA 394.

9 Hovercraft (General) Order 1972, SI 1972/674, art 5(6)(b).

10 Hovercraft (General) Order 1972, SI 1972/674, art 5(6)(c).

11 For the purposes of the Hovercraft (General) Order 1972, SI 1972/674, art 5, references to an interest in a hovercraft do not include references to an interest in a hovercraft to which a person is entitled only by virtue of his membership of a hovercraft club: art 5(12).

12 As to hire purchase agreements see **CONSUMER CREDIT** vol 9(1) (Reissue) PARA 95.

13 Hovercraft (General) Order 1972, SI 1972/674, art 5(6)(d)(i).

14 As to the meaning of 'beneficial interest' see PARA 390 note 6.

15 le in the case of a hovercraft registered under Hovercraft (General) Order 1972, SI 1972/674, art 5(4) (see PARA 391): see art 5(6)(d)(ii).

16 Hovercraft (General) Order 1972, SI 1972/674, art 5(6)(d)(ii).

17 Hovercraft (General) Order 1972, SI 1972/674, art 5(7).

18 le subject to the Hovercraft (General) Order 1972, SI 1972/674, art 5(4) (see PARA 391): see art 5(8).

19 Hovercraft (General) Order 1972, SI 1972/674, art 5(8). As to the cancellation of certificates see PARA 401.

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393. Notification of changes in particulars furnished on application for registration.

Any person who is registered as the owner of a hovercraft¹ registered in the United Kingdom² must forthwith inform the Secretary of State³ in writing of⁴:

- 749 (1) any change in the particulars which were furnished to the Secretary of State upon application being made for the registration of the hovercraft⁵;
- 750 (2) the destruction of the hovercraft, or its permanent withdrawal from use⁶;
- 751 (3) in the case of a registered hovercraft in respect of which an unqualified person⁷ is a charterer by demise⁸, the termination of the demise charter⁹.

Any person who becomes the owner of a hovercraft registered in the United Kingdom must immediately inform the Secretary of State in writing to that effect¹⁰.

Whenever it appears to him necessary or appropriate to do so for certain purposes¹¹, the Secretary of State may amend the register, or, if he thinks fit, may cancel the registration of the hovercraft, and he must cancel that registration if he is satisfied that there has been a change in the ownership of the hovercraft¹².

1 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388. For the purposes of art 5(9), the reference to the registered owner of a hovercraft includes, in the case of a deceased person, his legal personal representative, and, in the case of a body corporate which has been dissolved, its successor: art 5(12).

2 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARAS 391, 392.

3 As to the Secretary of State see PARA 38.

4 Hovercraft (General) Order 1972, SI 1972/674, art 5(9).

5 Hovercraft (General) Order 1972, SI 1972/674, art 5(9)(a). As to applications for registration of hovercraft in the United Kingdom see PARA 392.

6 Hovercraft (General) Order 1972, SI 1972/674, art 5(9)(b).

7 As to the meaning of 'unqualified person' see PARA 390 note 6.

8 I.e. in the case of demise chartered hovercraft registered in pursuance of the Hovercraft (General) Order 1972, SI 1972/674, art 5(4) (see PARA 391): see art 5(9)(c).

9 Hovercraft (General) Order 1972, SI 1972/674, art 5(9)(c).

10 Hovercraft (General) Order 1972, SI 1972/674, art 5(10).

11 I.e. for the purposes of giving effect to the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387 et seq, 394 et seq) or for bringing up to date or otherwise correcting the particulars entered on the register: see art 5(11).

12 Hovercraft (General) Order 1972, SI 1972/674, art 5(11).

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394. Nationality and registration marks.

A hovercraft¹ registered in the United Kingdom² must not be used unless³:

- 752 (1) it bears prominently and clearly painted or affixed to the craft its nationality and registration marks⁴; and
- 753 (2) the nationality and registration marks together with the name and address of the registered owner are engraved on a fire-proof metal plate affixed in a prominent position inside the hovercraft near an entrance⁵.

The nationality mark of a hovercraft registered in the United Kingdom must be the capital letters 'GH' in Roman characters and the registration mark must be a group of four digits assigned by the Secretary of State⁶ on the registration of the hovercraft⁷. The letters and digits must be without ornamentation and a hyphen must be placed between the nationality mark and the registration mark⁸.

The nationality and registration marks of a hovercraft are to be used as the sole means of identification of the craft by radio⁹.

1 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

2 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq.

3 Hovercraft (General) Order 1972, SI 1972/674, art 6(1). As to penalties for contravention see PARA 1123.

4 Hovercraft (General) Order 1972, SI 1972/674, art 6(1)(i).

5 Hovercraft (General) Order 1972, SI 1972/674, art 6(1)(ii).

6 As to the Secretary of State see PARA 38.

7 Hovercraft (General) Order 1972, SI 1972/674, art 6(2).

8 Hovercraft (General) Order 1972, SI 1972/674, art 6(2).

9 Hovercraft (General) Order 1972, SI 1972/674, art 6(3).

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395. Hovercraft registered outside the United Kingdom.

A hovercraft¹ registered in a country other than the United Kingdom² must not be used for reward or in connection with a trade or business in or over the United Kingdom, except with the permission of the Secretary of State³ to the operator⁴ or charterer of the hovercraft and in accordance with any conditions to which such permission may be subject⁵.

However, this requirement does not apply to the use of a hovercraft for passage through the territorial waters of the United Kingdom⁶.

1 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

2 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq.

3 Is granted under the Hovercraft (General) Order 1972, SI 1972/674, art 7: see art 7(1). As to the Secretary of State see PARA 38.

4 As to the meaning of 'operator' see PARA 388 note 2.

5 Hovercraft (General) Order 1972, SI 1972/674, art 7(1). As to penalties for contravention see PARA 1123.

6 Hovercraft (General) Order 1972, SI 1972/674, art 7(2). As to the extent of the territorial and non-territorial sea, the baselines used for delimitation, and associated rights see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 121 et seq.

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(iii) Certification and Maintenance

396. Application of provisions.

The provisions relating to certification and maintenance of a hovercraft¹ do not apply to hovercraft to which the Merchant Shipping (High-Speed Craft) Regulations 2004² apply³.

1 I.e. the Hovercraft (General) Order 1972, SI 1972/674, Pt II (arts 7A-17) (certification and maintenance) (see PARA 397 et seq): see art 7A (added by SI 1996/3173; amended by SI 2004/302). As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

2 I.e. the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARA 614 et seq): see the Hovercraft (General) Order 1972, SI 1972/674, art 7A (as added and amended: see note 1).

3 Hovercraft (General) Order 1972, SI 1972/674, art 7A (as added and amended: see note 1).

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397. Safety certificate to be in force.

A hovercraft¹ registered in the United Kingdom² may not be used unless there is in force in respect of it a current safety certificate³ and any conditions to which the certificate was issued are complied with⁴. This prohibition does not, however, apply, subject to the prior consent of the Secretary of State⁵ and to any conditions subject to which that consent was given, to a hovercraft in respect of which a safety certificate has previously been in force, which is used solely for the purpose of enabling it⁶:

- 754 (1) to qualify for renewal of a safety certificate or a variation of a certificate after an application has been made for such renewal or variation⁷;
- 755 (2) to proceed to or from a place at which any inspection or test of the hovercraft is to take place for the purpose of qualifying for renewal of a safety certificate or a variation of a certificate after an application has been made for such renewal or variation⁸; or
- 756 (3) to proceed to a place at which repairs can be effected⁹.

1 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388. As to the application of art 8 see PARA 396.

2 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq.

3 Issued in accordance with the Hovercraft (General) Order 1972, SI 1972/674: see art 8. As to the issue of safety certificates see PARA 398.

4 Hovercraft (General) Order 1972, SI 1972/674, art 8. As to penalties for contravention see PARA 1123.

5 As to the Secretary of State see PARA 38.

6 Hovercraft (General) Order 1972, SI 1972/674, art 8 proviso (b) (amended by SI 1996/3173).

7 Hovercraft (General) Order 1972, SI 1972/674, art 8 proviso (b)(i).

8 Hovercraft (General) Order 1972, SI 1972/674, art 8 proviso (b)(ii).

9 Hovercraft (General) Order 1972, SI 1972/674, art 8 proviso (b)(iii).

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398. Issue of safety certificates.

The Secretary of State¹ may issue a safety certificate in respect of a hovercraft² registered in the United Kingdom³ upon being satisfied that it is fit to be used, having regard, in particular, to⁴:

- 757 (1) the results of such investigations of the hovercraft as the Secretary of State may require⁵; and
- 758 (2) the quality of the hovercraft's construction⁶.

Every safety certificate may specify such categories⁷ as have been applied for and are, in the Secretary of State's opinion, appropriate to the hovercraft, and the safety certificate must be issued subject to the condition that the hovercraft is to be used only for specified purposes⁸ in relation to such categories⁹. Accordingly, the categories for which a safety certificate may be so issued are: passenger; cargo; and special¹⁰. In the passenger category, a hovercraft may be used for the purposes of the carriage of passengers¹¹ and their baggage, and any other purposes specified in the certificate¹²; in the cargo category, a hovercraft may be used for the purposes of the carriage of cargo generally, or for such cargo as may be specified in the certificate¹³; and, in the special category, a hovercraft may be used for any purpose specified in the certificate, but not including the carriage of passengers except as expressly permitted¹⁴.

The Secretary of State may issue the safety certificate subject to such other conditions relating to the safety of the hovercraft as he thinks fit¹⁵; and he may, having regard to such investigations as he may require, vary¹⁶ a safety certificate at the request of an applicant and such variation may be subject to such other conditions relating to the safety of hovercraft as he thinks fit¹⁷.

A safety certificate remains in force¹⁸ for such period not exceeding one year as may be specified in it, and may be renewed from time to time by the Secretary of State for such further period not exceeding one year as he thinks fit¹⁹. A safety certificate ceases to be valid in the event of the hovercraft ceasing to be registered in the United Kingdom²⁰.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388. As to the application of arts 11, 12 see PARA 396.

3 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq.

4 Hovercraft (General) Order 1972, SI 1972/674, art 11(1) (amended by SI 1996/3173).

5 Hovercraft (General) Order 1972, SI 1972/674, art 11(1)(b) (amended by SI 1996/3173).

6 Hovercraft (General) Order 1972, SI 1972/674, art 11(1)(c).

7 I.e. the categories referred to in the Hovercraft (General) Order 1972, SI 1972/674, art 11(2)(b) (see the text and note 10): see art 11(2)(a) (amended by SI 1996/3173).

8 I.e. the purposes indicated in the Hovercraft (General) Order 1972, SI 1972/674, art 11(2)(c) (see the text and notes 11-14): see art 11(2)(a) (as amended: see note 7).

- 9 Hovercraft (General) Order 1972, SI 1972/674, art 11(2)(a) (as amended: see note 7).
- 10 Hovercraft (General) Order 1972, SI 1972/674, art 11(2)(b).
- 11 As to the meaning of 'passenger' see PARA 387 note 6.
- 12 Hovercraft (General) Order 1972, SI 1972/674, art 11(2)(c).
- 13 Hovercraft (General) Order 1972, SI 1972/674, art 11(2)(c).
- 14 Hovercraft (General) Order 1972, SI 1972/674, art 11(2)(c).
- 15 Hovercraft (General) Order 1972, SI 1972/674, art 11(3) (amended by SI 1996/3173).
- 16 As to the variation of certificates see PARA 401.
- 17 Hovercraft (General) Order 1972, SI 1972/674, art 11(4) (amended by SI 1996/3173).
- 18 le subject to the provisions of the Hovercraft (General) Order 1972, SI 1972/674, art 11 and art 15 (revocation etc) (as to which see PARA 401): see art 12 (amended by SI 1996/3173).
- 19 Hovercraft (General) Order 1972, SI 1972/674, art 12 (as amended: see note 18).
- 20 Hovercraft (General) Order 1972, SI 1972/674, art 12 (as amended: see note 18).

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399. Certificates of compliance with international standards.

The Secretary of State¹ may issue in respect of a hovercraft² registered in the United Kingdom³ such certificates as he deems appropriate, as a result of inspection and survey of the hovercraft by the Civil Aviation Authority⁴, under the International Convention for the Safety of Life at Sea⁵ and the International Convention on Load Lines 1966⁶ for the purpose of complying with the law of a country other than the United Kingdom⁷.

The Secretary of State may cancel or suspend⁸ any certificate so issued where he has reason to believe⁹:

- 759 (1) that the certificate has been issued on the basis of inaccurate information¹⁰;
or
- 760 (2) that since the issue of the certificate the hovercraft has sustained any material damage or that the condition of the hovercraft or of its equipment does not correspond substantially with the particulars of that certificate¹¹.

The Secretary of State may require any certificate so issued¹² which has expired or been cancelled or suspended to be delivered up as he directs¹³.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388. As to the application of art 17 see PARA 396.

3 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq.

4 As to the Civil Aviation Authority see **AIR LAW** vol 2 (2008) PARA 50 et seq. The Hovercraft (General) (Amendment) Order 1996, SI 1996/3173, purported to remove references to the Civil Aviation Authority and to include references to the Secretary of State, consequent upon the Marine Safety Agency of the Department of Transport (see now the Maritime and Coastguard Agency (MCA); and PARA 56) taking over responsibility for the certification of hovercraft: see the Civil Aviation Authority (Hovercraft) (Revocation) Regulations 1996, SI 1996/3231, revoking the Civil Aviation Authority (Hovercraft) Regulations 1972, SI 1972/862. Nevertheless, no consequential amendment has been made in the Hovercraft (General) Order 1972, SI 1972/674, art 17 and the reference to the Civil Aviation Authority remains.

5 I.e. the International Convention for the Safety of Life at Sea 1960 (London, 17 June 1966; TS 65 (1965); Cmnd 2812): see the Hovercraft (General) Order 1972, SI 1972/674, art 17(1). The current Convention is the International Convention for the Safety of Life at Sea 1974 ('SOLAS') (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874): see PARA 8.

6 I.e. the International Convention on Load Lines (London, 5 April to 4 July 1966; TS 58 (1968); Cmnd 3708) (as to which see PARA 8) (implemented by the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see PARA 671 et seq): see the Hovercraft (General) Order 1972, SI 1972/674, art 17(1).

7 Hovercraft (General) Order 1972, SI 1972/674, art 17(1).

8 As to the cancellation or suspension of certificates see PARA 401.

9 Hovercraft (General) Order 1972, SI 1972/674, art 17(2).

- 10 Hovercraft (General) Order 1972, SI 1972/674, art 17(2)(a).
- 11 Hovercraft (General) Order 1972, SI 1972/674, art 17(2)(b).
- 12 le issued under the Hovercraft (General) Order 1972, SI 1972/674, art 17: see art 17(3).
- 13 Hovercraft (General) Order 1972, SI 1972/674, art 17(3).

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400. Inspection and maintenance of hovercraft.

The Secretary of State¹ may at any reasonable time inspect a hovercraft² or part of it or its equipment in respect of which a safety certificate³:

- 761 (1) has been applied for⁴; or
- 762 (2) has been issued and is still in force⁵; or
- 763 (3) has been issued and has ceased within the preceding period of three months to be in force⁶,

and he may, for that purpose, enter any premises where persons are employed in the design, construction, maintenance or storage of the hovercraft, or any hoverport⁷.

A hovercraft in respect of which a safety certificate is in force⁸ may not be used unless it is maintained in a condition satisfactory to the Secretary of State, and in accordance with arrangements approved by him⁹.

For the purposes of the certification and maintenance of hovercraft¹⁰, the Secretary of State may accept reports furnished to him by a person whom he may for the time being approve, either absolutely or subject to such conditions as he thinks fit, as qualified to furnish such reports¹¹.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388. As to the application of arts 13, 14, 16 see PARA 396.

3 Hovercraft (General) Order 1972, SI 1972/674, art 16 (amended by SI 1996/3173). As to safety certificates see PARAS 397, 398.

4 Hovercraft (General) Order 1972, SI 1972/674, art 16(a).

5 Hovercraft (General) Order 1972, SI 1972/674, art 16(b).

6 Hovercraft (General) Order 1972, SI 1972/674, art 16(c).

7 Hovercraft (General) Order 1972, SI 1972/674, art 16. As to the meaning of 'hoverport' under the Hovercraft Act 1968 see PARA 382 note 3.

8 In force under the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387 et seq, 401 et seq): see art 13 (amended by SI 1996/3173).

9 Hovercraft (General) Order 1972, SI 1972/674, art 13 (as amended: see note 8). As to penalties for contravention see PARA 1123.

10 In force for the purposes of the Hovercraft (General) Order 1972, SI 1972/674, Pt II (arts 7A-17) (certification and maintenance) (see PARAS 396 et seq, 401 et seq): see art 14 (amended by SI 1996/3173).

11 Hovercraft (General) Order 1972, SI 1972/674, art 14 (as amended: see note 10).

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401. Revocation, suspension, variation of certificates; power to prevent hovercraft being used.

The Secretary of State¹ may, if he thinks fit, provisionally suspend or vary any certificate², approval or other document issued, granted or having effect in relation to the certification and maintenance of hovercraft³ pending inquiry into or consideration of the case; and he may⁴, on sufficient ground being shown to his satisfaction after due inquiry, revoke, suspend or vary any such certificate, approval or other document⁵.

The holder or any person having the possession or custody of any such certificate, approval or other document which has been duly revoked, suspended or varied⁶ must surrender it to the Secretary of State within a reasonable time after being required to do so by him⁷.

The breach of any condition subject to which any such certificate, approval or other document has been granted or issued renders the document invalid during the continuance of the breach⁸.

If it appears likely to the Secretary of State that a hovercraft is intended or likely to be used⁹:

- 764 (1) in such circumstances that any conditions on which the safety certificate¹⁰ has been granted are breached¹¹;
- 765 (2) whilst the approved maintenance arrangements are not adhered to¹²;
- 766 (3) whilst materially damaged¹³; or
- 767 (4) in such circumstances that the Secretary of State has reason to believe that the hovercraft is or may be unsafe¹⁴,

the Secretary of State may direct the operator¹⁵ or the captain¹⁶ of the hovercraft that he is not to permit the hovercraft to make the particular journey, or any other journey of such description as may be specified in the direction, until the direction has been revoked by the Secretary of State¹⁷; and the Secretary of State may take such steps as are necessary to detain the hovercraft for a period not exceeding seven days¹⁸.

In the event of the Secretary of State provisionally suspending any certificate, approval or other document in this way¹⁹, or so detaining a hovercraft²⁰, he must, within 48 hours, send to the holder of such certificate, approval or other document a statement in writing of his reasons²¹.

Any document incorporated by reference in any certificate may be varied²² on sufficient ground being shown to the satisfaction of the Secretary of State, whether or not after due inquiry²³.

1 As to the Secretary of State see PARA 38.

2 As to certificates generally see PARA 396 et seq.

3 le issued, granted or having effect under the Hovercraft (General) Order 1972, SI 1972/674, Pt II (arts 7A-17) (certification and maintenance) (see PARA 396 et seq): see art 15(1) (amended by SI 1996/3173). As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388. As to the application of art 15 see PARA 396.

- 4 le without prejudice to the Hovercraft (General) Order 1972, SI 1972/674, art 11(4) (see PARA 398): see art 15(1) (as amended: see note 3).
- 5 Hovercraft (General) Order 1972, SI 1972/674, art 15(1) (as amended: see note 3). As to penalties for contravention see PARA 1123.
- 6 le revoked, suspended or varied under the Hovercraft (General) Order 1972, SI 1972/674, Pt II (arts 7A-17) (certification and maintenance) (see PARA 396 et seq): see art 15(2) (amended by SI 1996/3173).
- 7 Hovercraft (General) Order 1972, SI 1972/674, art 15(2) (as amended: see note 6).
- 8 Hovercraft (General) Order 1972, SI 1972/674, art 15(3).
- 9 Hovercraft (General) Order 1972, SI 1972/674, art 15(4) (amended by SI 1996/3173).
- 10 As to safety certificates see PARAS 397, 398.
- 11 Hovercraft (General) Order 1972, SI 1972/674, art 15(4)(a).
- 12 Hovercraft (General) Order 1972, SI 1972/674, art 15(4)(b).
- 13 Hovercraft (General) Order 1972, SI 1972/674, art 15(4)(c).
- 14 Hovercraft (General) Order 1972, SI 1972/674, art 15(4)(d) (amended by SI 1996/3173).
- 15 As to the meaning of 'operator' see PARA 388 note 2.
- 16 As to the meaning of 'captain' see PARA 388 note 6.
- 17 Hovercraft (General) Order 1972, SI 1972/674, art 15(4) (as amended: see note 9).
- 18 Hovercraft (General) Order 1972, SI 1972/674, art 15(4) (as amended: see note 9).
- 19 le under the Hovercraft (General) Order 1972, SI 1972/674, art 15(1) (see the text and notes 1-5): see art 15(5) (amended by SI 1996/3173).
- 20 le under the Hovercraft (General) Order 1972, SI 1972/674, art 15(4) (see the text and notes 9-18): see art 15(5) (as amended: see note 19).
- 21 Hovercraft (General) Order 1972, SI 1972/674, art 15(5) (as amended: see note 19).
- 22 le notwithstanding the Hovercraft (General) Order 1972, SI 1972/674, art 15(1) (see the text and notes 1-5): see art 15(6) (amended by SI 1996/3173).
- 23 Hovercraft (General) Order 1972, SI 1972/674, art 15(6) (as amended: see note 22).

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(iv) Duties of Operator and Captain

402. Application of provisions.

The provisions relating to the duties of the operator and the captain of a hovercraft¹ do not apply to hovercraft to which the Merchant Shipping (High-Speed Craft) Regulations 2004² apply³.

1 I.e. the Hovercraft (General) Order 1972, SI 1972/674, Pt III (arts 17A-24) (duties of operator and captain) (see PARA 403 et seq): see art 17A (added by SI 1996/3173). As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

2 I.e. the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARA 614 et seq): see the Hovercraft (General) Order 1972, SI 1972/674, art 17A (as added: see note 1); Interpretation Act s 17(2)(b). The reference in the Hovercraft (General) Order 1972, SI 1972/674, art 17A, is to the Merchant Shipping (High Speed Craft) Regulations 1996, SI 1996/3188 (revoked), but it is submitted that the reference is now to the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302; cf the Hovercraft (General) Order 1972, SI 1972/674, art 7A (as to which see PARA 396).

3 Hovercraft (General) Order 1972, SI 1972/674, art 17A (as added: see note 1).

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403. Operating permits.

Hovercraft¹ registered in the United Kingdom² must not be used for reward or in connection with a trade or business, otherwise than under and in accordance with a permit (an 'operating permit') granted to the operator³ of the hovercraft⁴. Operating permits must be granted with a view to securing the safe operation of the hovercraft⁵.

The Secretary of State⁶ may grant or renew to any person applying therefor an operating permit for the operation of hovercraft of the types and in relation to the areas of operation specified in the operating permit for the purposes so specified⁷. The operating permit may be granted subject to such conditions as the Secretary of State thinks fit to impose with a view to securing the safe operation of hovercraft, remains in force for such time as may be specified in the operating permit or until suspended or revoked by the Secretary of State and may be renewed from time to time by him for such further period as he thinks fit⁸. The Secretary of State may vary an operating permit on application by the holder⁹.

The conditions to which the operating permit may be subject may include¹⁰ conditions in respect of the following matters¹¹:

- 768 (1) crew complement and qualifications¹²;
- 769 (2) type of hovercraft¹³;
- 770 (3) area of operation¹⁴;
- 771 (4) restrictions with regard to working hours and rest periods of crew¹⁵;
- 772 (5) safety arrangements at hoverports¹⁶ or terminal areas¹⁷;
- 773 (6) the weather conditions in which the hovercraft may operate¹⁸;
- 774 (7) day or night operation¹⁹;
- 775 (8) life-saving equipment and procedures²⁰;
- 776 (9) other equipment and procedures necessary for safety of operation²¹;
- 777 (10) radio and radar²²;
- 778 (11) the keeping of records²³;
- 779 (12) medical equipment to be carried²⁴.

1 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388. As to the application of art 18 see PARA 402.

2 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq.

3 As to the meaning of 'operator' see PARA 388 note 2.

4 Hovercraft (General) Order 1972, SI 1972/674, art 18(1) (amended by SI 1996/3173). The permit referred to in the text is granted to the operator under the Hovercraft (General) Order 1972, SI 1972/674, art 18(2) (see the text and notes 6-9): see art 18(1) (as so amended). As to penalties for contravention see PARA 1123.

5 Hovercraft (General) Order 1972, SI 1972/674, art 18(1) (as amended: see note 4).

6 As to the Secretary of State see PARA 38.

7 Hovercraft (General) Order 1972, SI 1972/674, art 18(2). As to the variation of operating permits see PARA 401.

- 8 Hovercraft (General) Order 1972, SI 1972/674, art 18(2).
- 9 Hovercraft (General) Order 1972, SI 1972/674, art 18(2).
- 10 le without prejudice to the generality of the Hovercraft (General) Order 1972, SI 1972/674, art 18(2) (see the text and notes 6-9): see art 18(3).
- 11 Hovercraft (General) Order 1972, SI 1972/674, art 18(3).
- 12 Hovercraft (General) Order 1972, SI 1972/674, art 18(3)(a).
- 13 Hovercraft (General) Order 1972, SI 1972/674, art 18(3)(b).
- 14 Hovercraft (General) Order 1972, SI 1972/674, art 18(3)(c).
- 15 Hovercraft (General) Order 1972, SI 1972/674, art 18(3)(d).
- 16 As to the meaning of 'hoverport' under the Hovercraft Act 1968 see PARA 382 note 3.
- 17 Hovercraft (General) Order 1972, SI 1972/674, art 18(3)(e).
- 18 Hovercraft (General) Order 1972, SI 1972/674, art 18(3)(f).
- 19 Hovercraft (General) Order 1972, SI 1972/674, art 18(3)(g).
- 20 Hovercraft (General) Order 1972, SI 1972/674, art 18(3)(h).
- 21 Hovercraft (General) Order 1972, SI 1972/674, art 18(3)(i).
- 22 Hovercraft (General) Order 1972, SI 1972/674, art 18(3)(j).
- 23 Hovercraft (General) Order 1972, SI 1972/674, art 18(3)(k).
- 24 Hovercraft (General) Order 1972, SI 1972/674, art 18(3)(l) (added by SI 1989/1351).

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404. Duties of operator and owner.

The operator¹ of a hovercraft² registered in the United Kingdom³ must not permit the hovercraft to be used without first⁴:

- 780 (1) designating a member of the crew to be captain⁵ on that journey⁶;
- 781 (2) ensuring that a minimum number of the crew corresponding to the complement necessary for the journey are adequately trained for their duties for that journey⁷;
- 782 (3) ensuring that the safety equipment required to be carried is in working order⁸.

Without prejudice to his other statutory duties⁹, an operator must at all times take all reasonable precautions at hoverports¹⁰ and terminal areas so as to ensure the safety of persons and property in the hovercraft and on the ground¹¹.

An operator must not permit any hovercraft to be used if he has reason to believe or suspect it is in an unsafe condition¹².

It is also the duty of the owner of a sea-going hovercraft registered in the United Kingdom which was constructed on or after 1 January 1996 to ensure that masters and officers, ratings and other personnel have completed the training specified by the Secretary of State¹³.

1 As to the meaning of 'operator' see PARA 388 note 2.

2 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388. As to the application of art 19 see PARA 402.

3 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq. The text also includes a reference to the operator of a hovercraft operating unregistered in the United Kingdom in accordance with the Hovercraft (General) Order 1972, SI 1972/674, art 4 proviso (i) (revoked): see art 19(1). Quaere whether the reference to art 4 proviso (i) was meant to have been deleted by the Hovercraft (General) (Amendment) Order 1996, SI 1996/3173: see eg art 14(a) (amending the Hovercraft (General) Order 1972, SI 1972/674, art 23(1) (see PARA 407)); and the Hovercraft (General) (Amendment) Order 1996, SI 1996/3173, art 15 (amending the Hovercraft (General) Order 1972, SI 1972/674, art 24(2) (see PARA 409)). Cf art 22; and PARA 408.

4 Hovercraft (General) Order 1972, SI 1972/674, art 19(1).

5 As to the meaning of 'captain' see PARA 388 note 6.

6 Hovercraft (General) Order 1972, SI 1972/674, art 19(1)(a). As to penalties for contravention see PARA 1123.

7 Hovercraft (General) Order 1972, SI 1972/674, art 19(1)(b).

8 Hovercraft (General) Order 1972, SI 1972/674, art 19(1)(c).

9 Ie his other duties under the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387 et seq, 405 et seq): see art 19(2).

10 As to the meaning of 'hoverport' under the Hovercraft Act 1968 see PARA 382 note 3.

- 11 Hovercraft (General) Order 1972, SI 1972/674, art 19(2).
- 12 Hovercraft (General) Order 1972, SI 1972/674, art 19(3).
- 13 See the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 22; and PARA 496.

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405. Duties of captain.

The captain¹, before the departure of the hovercraft²: (1) must take reasonable steps to ensure³: (a) that the craft is properly loaded and any cargo adequately secured in the craft⁴; (b) that there is an adequate supply of fuel⁵; and (c) that the craft is in a fit state and that the safety equipment required to be carried is in a fit condition and ready to be used⁶; and (2) must satisfy himself that the journey can safely be made, taking into account the latest information available to him as to the route and weather⁷.

1 As to the meaning of 'captain' see PARA 388 note 6.

2 Hovercraft (General) Order 1972, SI 1972/674, art 20. As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388. As to the application of art 20 see PARA 402.

3 Hovercraft (General) Order 1972, SI 1972/674, art 20(a). As to penalties for contravention see PARA 1123.

4 Hovercraft (General) Order 1972, SI 1972/674, art 20(a)(i).

5 Hovercraft (General) Order 1972, SI 1972/674, art 20(a)(ii).

6 Hovercraft (General) Order 1972, SI 1972/674, art 20(a)(iii).

7 Hovercraft (General) Order 1972, SI 1972/674, art 20(b).

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406. Duty of captain and operator to keep operational records.

The captain¹ of every hovercraft² registered in the United Kingdom³ must ensure that records are kept of the following matters relating to any journey of the hovercraft⁴:

- 783 (1) names of terminal and any intermediate points, and the times of departure from and arrival at such points⁵;
- 784 (2) weather conditions, such as wind, sea condition and visibility experienced⁶;
- 785 (3) any accidents⁷ or unusual occurrences on the journey⁸;
- 786 (4) any births or deaths which occur on the journey⁹;
- 787 (5) a summary of all communications relating to distress, urgency and safety traffic¹⁰.

The operator¹¹ of every hovercraft registered in the United Kingdom must keep records of crew emergency and distress drills (including names of persons present)¹², and the names of all crew aboard a hovercraft on any journey¹³.

The captain or operator, as the case may be, must, within a reasonable time after being requested to do so by an authorised person¹⁴, cause the records that are required to be kept by them¹⁵ to be produced to that person¹⁶. Such records must be preserved by the operator for at least 12 months after any journey or drill to which they refer¹⁷; and the records to be kept by the captain¹⁸ must be delivered to the operator of the hovercraft to which the records relate by the captain at the time he ceases to be the captain, or when the operator requires their delivery¹⁹. A person required to preserve any record by reason of his being the operator of a hovercraft must, if he ceases to be the operator of the hovercraft, continue to preserve the record as if he had not ceased to be the operator, and, in the event of his death, the duty to preserve the record falls upon his personal representative²⁰.

1 As to the meaning of 'captain' see PARA 388 note 6.

2 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388. As to the application of art 21 see PARA 402.

3 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq.

4 Hovercraft (General) Order 1972, SI 1972/674, art 21(1). As to penalties for contravention see PARA 1123.

5 Hovercraft (General) Order 1972, SI 1972/674, art 21(1)(a).

6 Hovercraft (General) Order 1972, SI 1972/674, art 21(1)(b).

7 As to accidents occurring on the journey see PARA 409.

8 Hovercraft (General) Order 1972, SI 1972/674, art 21(1)(c).

9 Hovercraft (General) Order 1972, SI 1972/674, art 21(1)(d). As to the recording of births, deaths and missing persons by persons operating hovercraft registered in the United Kingdom see PARA 418 et seq.

10 Hovercraft (General) Order 1972, SI 1972/674, art 21(1)(e).

11 As to the meaning of 'operator' see PARA 388 note 2.

12 Hovercraft (General) Order 1972, SI 1972/674, art 21(2)(a).

13 Hovercraft (General) Order 1972, SI 1972/674, art 21(2)(b).

14 For these purposes, 'authorised person' means any constable and any person authorised in writing by the Secretary of State either generally or in relation to a particular case or class of cases: Hovercraft (General) Order 1972, SI 1972/674, art 3(1). As to the Secretary of State see PARA 38.

15 le the records referred to in the Hovercraft (General) Order 1972, SI 1972/674, art 21(1), (2) (see the text and notes 1-13): see art 21(3).

16 Hovercraft (General) Order 1972, SI 1972/674, art 21(3).

17 Hovercraft (General) Order 1972, SI 1972/674, art 21(4)(a).

18 le the records referred to in the Hovercraft (General) Order 1972, SI 1972/674, art 21(1) (see the text and notes 1-10): see art 21(4)(b).

19 Hovercraft (General) Order 1972, SI 1972/674, art 21(4)(b).

20 Hovercraft (General) Order 1972, SI 1972/674, art 21(4)(c).

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407. Documents to be carried.

A hovercraft¹ registered in the United Kingdom² must, when in operation, carry the following documents or true copies of them³:

- 788 (1) its safety certificate⁴;
- 789 (2) its certificate of registration, if any⁵;
- 790 (3) any international certificate⁶.

The safety certificate and international certificate or true copies of them must be posted in some conspicuous place in the hovercraft⁷.

1 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388. As to the application of art 23 see PARA 402.

2 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq.

3 Hovercraft (General) Order 1972, SI 1972/674, art 23(1) (amended by SI 1996/3173). As to penalties for contravention see PARA 1123.

4 Hovercraft (General) Order 1972, SI 1972/674, art 23(1)(a) (amended by SI 1996/3173). As to safety certificates see PARAS 397, 398.

5 Hovercraft (General) Order 1972, SI 1972/674, art 23(1)(b). As to the certificate of registration see PARA 392.

6 Hovercraft (General) Order 1972, SI 1972/674, art 23(1)(c). The text refers to any certificate issued to the hovercraft under art 17 (see PARA 399): see art 23(1)(c).

7 Hovercraft (General) Order 1972, SI 1972/674, art 23(2).

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408. Medical equipment.

A hovercraft¹ registered in the United Kingdom² must carry, when in use, first-aid equipment of good quality and sufficient in quantity having regard to the number of persons on board and the circumstances of the use of the hovercraft³.

1 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388. As to the application of art 22 see PARA 402.

2 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq. The text also includes a reference also to a hovercraft used unregistered in accordance with the Hovercraft (General) Order 1972, SI 1972/674, art 4 proviso (i) (revoked): see art 22 (amended by SI 1989/1351). Quaere whether the reference to the Hovercraft (General) Order 1972, SI 1972/674, art 4 proviso (i) was meant to have been deleted by the Hovercraft (General) (Amendment) Order 1996, SI 1996/3173: cf art 14(a) (amending the Hovercraft (General) Order 1972, SI 1972/674, art 23(1) (see PARA 407)); and the Hovercraft (General) (Amendment) Order 1996, SI 1996/3173, art 15 (amending the Hovercraft (General) Order 1972, SI 1972/674, art 24(2) (see PARA 409)). Cf art 19; and PARA 404.

3 Hovercraft (General) Order 1972, SI 1972/674, art 22 (as amended: see note 2). As to penalties for contravention see PARA 1123.

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409. Notification of casualties.

A hovercraft¹ casualty is deemed to occur² when a hovercraft³:

- 791 (1) has sustained, caused or been involved in any accident occasioning loss of life or any serious injury to any person⁴;
- 792 (2) becomes lost, abandoned, missing or stranded⁵;
- 793 (3) suffers such damage as the result of any accident that its safety is impaired⁶;
- 794 (4) becomes involved in a collision with another hovercraft or ship⁷; or
- 795 (5) causes any damage⁸,

but only when the occurrence takes place:

- 796 (a) on or over the sea or other navigable water⁹; or
- 797 (b) between the time when any person goes on board the hovercraft for the purpose of making a journey which would involve crossing the sea or other navigable water and the time when it comes to rest at the end of such a journey¹⁰; or
- 798 (c) during the testing or maintenance of a hovercraft which normally makes journeys on or over the sea or other navigable water¹¹;

and also only if, at the time the occurrence takes place, the hovercraft was registered in the United Kingdom¹² or was within the United Kingdom¹³.

Where a hovercraft casualty has occurred, the captain¹⁴ (or, if the captain is incapacitated, the operator¹⁵) of the hovercraft must¹⁶:

- 799 (i) by the quickest available means inform the Secretary of State¹⁷ of the happening of the casualty, stating the registration number¹⁸ or identity of the hovercraft¹⁹ and the place where the casualty occurred or is believed to have occurred and, in the case of a hovercraft which is missing, the route it was on²⁰; and
- 800 (ii) within 48 hours, or as soon thereafter as possible, transmit to the Secretary of State a report, signed by the captain or operator, of the casualty and of the probable occasion of it, stating the registration number or identity of the hovercraft and the place where the casualty occurred or is believed to have occurred²¹.

1 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388. As to the application of art 24 generally see PARA 402.

2 Ie for the purposes of the Hovercraft (General) Order 1972, SI 1972/674, art 24: see art 24(2).

3 Hovercraft (General) Order 1972, SI 1972/674, art 24(2). The provisions of art 24 do not, however, apply to hovercraft which are less than 1,000 kilograms unladen weight and are not used for reward: art 24(1) proviso. As to the meaning of 'unladen weight' see PARA 390 note 9.

4 Hovercraft (General) Order 1972, SI 1972/674, art 24(2)(a).

5 Hovercraft (General) Order 1972, SI 1972/674, art 24(2)(b).

- 6 Hovercraft (General) Order 1972, SI 1972/674, art 24(2)(c) (amended by SI 1989/1351).
- 7 Hovercraft (General) Order 1972, SI 1972/674, art 24(2)(d).
- 8 Hovercraft (General) Order 1972, SI 1972/674, art 24(2)(e) (added by SI 1989/1351).
- 9 Hovercraft (General) Order 1972, SI 1972/674, art 24(2)(i). As to the meaning of 'navigable water' see PARA 387 note 4.
- 10 Hovercraft (General) Order 1972, SI 1972/674, art 24(2)(ii).
- 11 Hovercraft (General) Order 1972, SI 1972/674, art 24(2)(iii).
- 12 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq.
- 13 Hovercraft (General) Order 1972, SI 1972/674, art 24(2) (amended by SI 1996/3173).
- 14 As to the meaning of 'captain' see PARA 388 note 6.
- 15 As to the meaning of 'operator' see PARA 388 note 2.
- 16 Hovercraft (General) Order 1972, SI 1972/674, art 24(1). As to penalties for contravention see PARA 1123.
- 17 As to the Secretary of State see PARA 38.
- 18 As to the registration number of a hovercraft see PARA 392.
- 19 As to the means of identification of hovercraft see PARA 394.
- 20 Hovercraft (General) Order 1972, SI 1972/674, art 24(1)(a).
- 21 Hovercraft (General) Order 1972, SI 1972/674, art 24(1)(b).

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(v) Safety etc

410. Safety of persons and property.

A person must not wilfully or negligently¹:

- 801 (1) act in a manner likely to endanger a hovercraft², or any person in it³; or
- 802 (2) go or attempt to go on a journey on a hovercraft without the consent of the captain⁴ or other person authorised to give it⁵.

A person must not:

- 803 (a) enter a hovercraft when drunk or be drunk in a hovercraft⁶; or
- 804 (b) smoke in a place in a hovercraft or at a hoverport⁷ where and when smoking is prohibited by notice⁸.

A person must not wilfully obstruct or impede any person acting in the exercise of his powers or the performance of his duties⁹.

1 Hovercraft (General) Order 1972, SI 1972/674, art 26(1). As to penalties for contravention see PARA 1123.

2 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

3 Hovercraft (General) Order 1972, SI 1972/674, art 26(1)(a).

4 As to the meaning of 'captain' see PARA 388 note 6.

5 Hovercraft (General) Order 1972, SI 1972/674, art 26(1)(b).

6 Hovercraft (General) Order 1972, SI 1972/674, art 26(2)(a).

7 As to the meaning of 'hoverport' under the Hovercraft Act 1968 see PARA 382 note 3.

8 Hovercraft (General) Order 1972, SI 1972/674, art 26(2)(b).

9 Hovercraft (General) Order 1972, SI 1972/674, art 30. The text refers to a person acting in the exercise of his powers or the performance of his duties under the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387 et seq, 411 et seq): see art 30.

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411. Duty to obey captain.

Every person in a hovercraft¹ must obey all lawful commands which the captain² may give for the purpose of securing the safety of the hovercraft and of persons and property carried in it, or the safety, efficiency or regularity of navigation³.

1 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

2 As to the meaning of 'captain' see PARA 388 note 6.

3 Hovercraft (General) Order 1972, SI 1972/674, art 27. As to penalties for contravention see PARA 1123.

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412. Right of access to hoverports.

The Secretary of State¹ and any authorised person² have the right of access at all reasonable times to any hoverport³ and any place where a hovercraft⁴ is for the purpose of inspecting any hovercraft or any document⁵ which they have power to demand⁶, and for the purpose of detaining any hovercraft⁷.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'authorised person' see PARA 406 note 14.

3 As to the meaning of 'hoverport' under the Hovercraft Act 1968 see PARA 382 note 3.

4 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

5 As to records to be kept and documents to be carried on board a hovercraft see PARA 406.

6 *Ie* under the provisions of the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387 et seq, 413 et seq): see art 25.

7 Hovercraft (General) Order 1972, SI 1972/674, art 25. The text refers to the purpose of detaining any hovercraft under the provisions of the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387 et seq, 413 et seq): see art 25.

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413. Power to prevent hovercraft from operating.

If it appears to the Secretary of State¹ or an authorised person² that any hovercraft³ is intended or likely to be operated⁴:

- 805 (1) in such circumstances that certain provisions as to the registration and operation of hovercraft⁵ would be contravened in relation to the journey⁶; or
- 806 (2) in such circumstances that the journey would be in contravention of any other general provision relating to hovercraft⁷ and be a cause of danger to any person or property whether or not in the hovercraft⁸; or
- 807 (3) while in a condition unfit for operation whether or not the journey would otherwise be in contravention of any of those provisions⁹,

the Secretary of State or that authorised person may direct the operator¹⁰ or the captain¹¹ of the hovercraft that he is not to permit the hovercraft to make the particular journey, or any other journey of such description as may be specified in the direction, until the direction has been revoked by the Secretary of State or by an authorised person; and the Secretary of State or that person may take such steps as are necessary to detain the hovercraft¹².

The Secretary of State or any authorised person may enter upon and inspect any hovercraft for these purposes¹³.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'authorised person' see PARA 406 note 14.

3 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

4 Hovercraft (General) Order 1972, SI 1972/674, art 28(1). As to penalties for contravention see PARA 1123.

5 I.e. any provision of the Hovercraft (General) Order 1972, SI 1972/674, art 4 (see PARA 390), art 6 (see PARA 394), art 7 (see PARA 395), art 8 (see PARA 397), art 13 (see PARA 400) or art 18 (see PARA 403): see art 28(1)(a).

6 Hovercraft (General) Order 1972, SI 1972/674, art 28(1)(a).

7 I.e. any other provision of the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387 et seq, 414 et seq): see art 28(1)(b).

8 Hovercraft (General) Order 1972, SI 1972/674, art 28(1)(b).

9 Hovercraft (General) Order 1972, SI 1972/674, art 28(1)(c). The text refers to any provision of the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387 et seq, 414 et seq): see art 28(1)(c).

10 As to the meaning of 'operator' see PARA 388 note 2.

11 As to the meaning of 'captain' see PARA 388 note 6.

12 Hovercraft (General) Order 1972, SI 1972/674, art 28(1). As to the enforcement of directions see PARA 415.

13 Hovercraft (General) Order 1972, SI 1972/674, art 28(2).

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414. Revocation etc of certificates etc.

The Secretary of State¹ may, if he thinks fit, provisionally suspend any certificate, licence, approval, permission, exemption or other document issued, granted or having effect under the provisions relating to the registration and operation of hovercraft², pending inquiry into or investigation of the case, and may³, on sufficient ground being shown to his satisfaction after due inquiry, revoke, suspend or vary any such certificate, licence, approval, permission, exemption or other document⁴.

The holder or any person having the possession or custody of any certificate, licence, approval, permission, exemption or other document which has been revoked, suspended or varied under these provisions must surrender it to the Secretary of State within a reasonable time after being required to do so by him⁵.

The breach of any condition subject to which any certificate, licence, approval, permission, exemption or other document has been granted or issued, or which has effect under the general provisions relating to hovercraft⁶, renders the document invalid during the continuance of the breach⁷.

1 As to the Secretary of State see PARA 38.

2 I.e. the provisions of the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387 et seq, 415 et seq), other than Pt II (arts 7A-17) (as to which see PARA 396 et seq): see art 29(1). As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

3 I.e. without prejudice to the Hovercraft (General) Order 1972, SI 1972/674, art 18(2) (see PARA 403): see art 29(1).

4 Hovercraft (General) Order 1972, SI 1972/674, art 29(1). As to penalties for contravention see PARA 1123.

5 Hovercraft (General) Order 1972, SI 1972/674, art 29(2).

6 I.e. under the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387 et seq, 415 et seq): see art 29(3).

7 Hovercraft (General) Order 1972, SI 1972/674, art 29(3).

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415. Enforcement of directions.

Any person who fails to comply with any direction given to him under any of the general hovercraft provisions¹ by the Secretary of State² or by any authorised person³ is deemed to have contravened the provision under which the direction was given⁴.

1 le under any provision of the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387 et seq, 416, 417, 1123): see art 31. As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

2 As to the Secretary of State see PARA 38.

3 As to the meaning of 'authorised person' see PARA 406 note 14.

4 Hovercraft (General) Order 1972, SI 1972/674, art 31. As to penalties for contravention see PARA 1123.

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416. Exemptions.

The Secretary of State¹ may exempt from any of the general hovercraft provisions², or any regulations made thereunder, any hovercraft or persons or classes of hovercraft or persons, either absolutely or subject to such conditions as he thinks fit³.

1 As to the Secretary of State see PARA 38.

2 In any of the provisions of the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387 et seq, 417, 1123): see art 32. As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

3 Hovercraft (General) Order 1972, SI 1972/674, art 32.

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(vi) Fees

417. Fees.

The Secretary of State¹ may, by regulations made by statutory instrument², require the payment of fees in respect of any specified matter relating to hovercraft³; and may prescribe, with the approval of the Treasury⁴, the amount of any such fee or the manner in which it is to be determined⁵.

1 As to the Secretary of State see PARA 38.

2 The Statutory Instruments Act 1946 ss 1-3 (as to which see **STATUTES** vol 44(1) (Reissue) PARA 1503 et seq) apply to the regulations: see the Hovercraft (General) Order 1972, SI 1972/674, art 35.

3 Ie any matter specified in the Hovercraft (General) Order 1972, SI 1972/674 (see PARAS 387 et seq, 1123): see art 35. As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

4 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 Hovercraft (General) Order 1972, SI 1972/674, art 35. In exercise of the power so conferred, the Secretary of State has made the Hovercraft (Fees) Regulations 1997, SI 1997/320 (amended by SI 2004/1976, SI 2006/2053).

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(vii) Births, Deaths and Missing Persons

418. Returns relating to births and deaths.

The operator of a hovercraft¹ registered in the United Kingdom² must, as soon as practicable but not later than three months after the occurrence in any part of the world of a birth or death in the hovercraft³, transmit to the Secretary of State⁴ a return of such birth or death in the prescribed form⁵. If, however, such particulars are not known to the operator of the hovercraft, he must so transmit so many of the particulars as he is reasonably able to ascertain having regard to the circumstances of the birth or death⁶.

To facilitate the rendering of such returns, the person in command⁷ of a hovercraft registered in the United Kingdom must make records available to the operator as soon as practicable of the occurrence in any part of the world of a birth or death in the hovercraft⁸. If, however, all such particulars are not known to the person in command of a hovercraft and cannot be readily ascertained by him, he must record and so make available so many of such particulars as are readily ascertainable⁹.

1 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. Note, however, that the Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, were made under the Civil Aviation Act 1949 s 55 (repealed), but have effect as if made under the Civil Aviation Act 1982 s 83 (as to which see **AIR LAW** vol 2 (2008) PARAS 582, 583).

2 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq.

3 For these purposes, references to births or deaths in a hovercraft include references to births or deaths on a hovercraft's lifeboat or life-raft and, in the case of deaths, to being lost from a hovercraft or hovercraft's lifeboat of hovercraft's life-raft: Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 2(1).

4 As to the Secretary of State see PARA 38.

5 Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 3(1). The text refers to a return of such birth or death in the form, in accordance with the instructions for completion, and containing the particulars prescribed in reg 3(1), App A (in the case of a birth) or App B (in the case of a death): see reg 3(1). In the case of the birth of an illegitimate child, the name of any person as father of such child is not to be entered in any return or record of particulars of the birth of such child unless the mother of the child and the person acknowledging himself to be the father of the child have signed a completed form of return as informants: reg 7.

6 Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 3(1) proviso.

7 For these purposes, 'person in command' of a hovercraft means, in a case where a person other than the captain is in command of the hovercraft, that person and, in any other case, the captain: Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 2(1).

8 Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 3(2).

9 Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 3(2) proviso.

UPDATE

418 Returns relating to births and deaths

NOTE 5--SI 1972/1513 App A, App B amended, reg 7 substituted: SI 2009/1892.

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419. Records to be kept by the Secretary of State.

The Secretary of State¹ must keep in his department²:

- 808 (1) a separate record of births in the prescribed form³ in which must be recorded the particulars transmitted to him of births occurring in any part of the world in hovercraft registered in the United Kingdom⁴;
- 809 (2) a separate record of deaths in the prescribed form⁵ in which must be recorded the particulars transmitted to him of deaths occurring in any part of the world in hovercraft registered in the United Kingdom⁶;
- 810 (3) a separate record in the prescribed form⁷ of persons reported to him as missing persons⁸.

1 As to the Secretary of State see PARA 38.

2 Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 4.

3 In the form of the Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 4(1), App C: see reg 4(1). As to recording the birth of an illegitimate child see reg 7; and PARA 418 note 5.

4 Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 4(1). As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq.

5 In the form of the Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 4(2), App D: see reg 4(2).

6 Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 4(2).

7 In the form of the Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 4(3), App E: see reg 4(2).

8 Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 4(3). For these purposes, 'missing persons' means persons with respect to whom there are reasonable grounds for believing that they have died on a hovercraft registered in the United Kingdom: reg 2(1).

UPDATE

419 Records to be kept by the Secretary of State

NOTE 3--SI 1972/1513 App C amended: SI 2009/1892.

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420. Transmission of copies of entries to the appropriate Registrar General.

The Secretary of State¹ must, within seven days of the completion of an entry in any record of births, deaths, or missing persons relating to hovercraft² registered in the United Kingdom³ which is kept in his department⁴, cause a certified copy of such entry to be transmitted to the appropriate Registrar General⁵.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. Note, however, that the Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, were made under the Civil Aviation Act 1949 s 55 (repealed), but have effect as if made under the Civil Aviation Act 1982 s 83 (as to which see **AIR LAW** vol 2 (2008) PARAS 582, 583).

3 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq.

4 Ie any such record as is mentioned in the text kept pursuant to the Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513 (see PARA 419): see reg 5.

5 Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 5. Except where it appears to the Secretary of State that an entry in the relevant record has a connection to Scotland or Northern Ireland, a certified copy of an entry in the record of births, deaths, or missing persons, must be sent to the Registrar General of Births, Deaths and Marriages in England: see reg 6. As to the Registrar General of Births, Deaths and Marriages in England see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARA 605 et seq.

UPDATE

420 Transmission of copies of entries to the appropriate Registrar General

NOTE 5--SI 1972/1513 reg 6 amended: SI 2009/1892.

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421. Rectification of entries of births, deaths and missing persons.

If the Secretary of State¹ is satisfied that there is an error or omission in any entry made in the record of births, deaths, or missing persons relating to hovercraft² registered in the United Kingdom³ which is kept in his department⁴, he may, in accordance with evidence of the true facts relating to the entry, rectify it in such manner as may appear to him appropriate⁵.

Within seven days after the correction of any such entry in his records, the Secretary of State must cause a certified copy of such corrected entry to be transmitted to the appropriate Registrar General⁶.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. Note, however, that the Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, were made under the Civil Aviation Act 1949 s 55 (repealed), but have effect as if made under the Civil Aviation Act 1982 s 83 (as to which see **AIR LAW** vol 2 (2008) PARAS 582, 583).

3 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq.

4 As to such records as are mentioned in the text which must be kept by the Secretary of State pursuant to the Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, see PARA 419.

5 Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 8(1).

6 Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 8(2). As to the appropriate Registrar General see reg 6; and PARA 420 note 5.

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422. Foreign and Commonwealth hovercraft.

The requirements for registration of births and deaths in a hovercraft¹ also apply in relation to any hovercraft not registered in the United Kingdom² which carry passengers to or from any port in the United Kingdom with respect to the registration of births and deaths of citizens of the United Kingdom and colonies³ on board such hovercraft on a journey to or from any port in the United Kingdom⁴.

1 The requirements of the provisions of the Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513 (see PARAS 418-421): see reg 9. As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. Note, however, that the Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, were made under the Civil Aviation Act 1949 s 55 (repealed), but have effect as if made under the Civil Aviation Act 1982 s 83 (as to which see **AIR LAW** vol 2 (2008) PARAS 582-583).

2 As to the meaning of 'United Kingdom' for these purposes see PARA 389 note 3. As to the procedure for registration of hovercraft in the United Kingdom see PARA 391 et seq.

3 As to citizenship of the United Kingdom and colonies see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 16-21. As to the meaning of 'colony' see **STATUTES** vol 44(1) (Reissue) PARA 1383.

4 Hovercraft (Births, Deaths and Missing Persons) Regulations 1972, SI 1972/1513, reg 9.

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5. MASTERS AND SEAMEN

(1) IN GENERAL

423. Application of general provisions relating to masters and seamen.

The provisions of the Merchant Shipping Act 1995 that relate to masters¹ and seamen², with certain exceptions³, apply only to ships⁴ which are sea-going ships and masters and seamen employed in sea-going ships⁵; and are subject to modification in their application to fishing vessels⁶ and persons serving in them⁷.

1 As to the meaning of 'master' see PARA 424.

2 Ie the Merchant Shipping Act 1995 Pt III (ss 24-84) (see PARA 450 et seq): see s 24(1). As to the meaning of 'seaman' see PARA 424.

3 Those exceptions are: the Merchant Shipping Act 1995 s 43 (crew accommodation) (see PARA 485); s 46 (application of ss 47-51) (see PARA 489); s 47 (manning) (see PARA 490); s 48 (power to exempt from manning requirements) (see PARA 491); s 49 (prohibition of going to sea undermanned) (see PARA 1136); s 50 (production of certificates and other documents of qualification) (see PARA 501); s 51 (crew's knowledge of English) (see PARA 492); s 52 (unqualified persons going to sea as qualified officers or seamen) (see PARA 1140); s 54 (special certificates of competence) (see PARA 494); s 55 (young persons) (see PARA 503); s 58 (conduct endangering ships, structures or individuals) (see PARA 1159); s 61 (inquiry into fitness or conduct of officer) (see PARA 511); s 62 (disqualification of holder of certificates other than officer's) (see PARA 507); s 63 (inquiry into fitness or conduct of seamen other than officer) (see PARA 517); s 64 (rehearing of and appeal from inquiries) (see PARA 523); s 65 (rules as to inquiries and appeals) (see PARA 509); s 66 (failure to deliver cancelled or suspended certificate) (see PARAS 525, 1142); s 67 (power to restore certificate) (see PARA 526); s 68 (power to summon witness to inquiry into fitness or conduct of officer or other seaman) (see PARA 510); and s 69 (Scottish provisions): see s 24(1), (2).

4 As to the meaning of 'ship' see PARA 229.

5 Merchant Shipping Act 1995 s 24(1).

6 As to the meaning of 'fishing vessel' see PARA 230 note 9.

7 The Merchant Shipping Act 1995 Pt III (see PARA 450 et seq), in its application to fishing vessels and persons serving in them, has effect subject to the modifications made by Pt V (ss 109-127) (fishing vessels) (see PARA 458 et seq); and in particular s 110 (payments of seaman's wages) (see PARA 479); and s 112 (accounts of wages and catch) (see PARA 481) apply to the exclusion of s 30 (payment of seaman's wages) (see PARA 467); and s 31 (account of seaman's wages) (see PARA 468): s 24(3). As to the power to grant exemptions from Pt V Ch I (ss 109-120) (skipper and seamen) see s 120; and PARA 425.

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424. Meanings of 'master' and 'seaman'.

In the Merchant Shipping Act 1995, unless the context otherwise requires, 'master' includes every person (except a pilot¹) having command or charge of a ship² and, in relation to a fishing vessel³, means the skipper⁴.

'Seaman' includes every person (except masters and pilots) employed or engaged in any capacity on board any ship⁵.

- 1 As to pilots and pilotage see PARA 562 et seq.
- 2 As to the meaning of 'ship' see PARA 229.
- 3 As to the meaning of 'fishing vessel' see PARA 230 note 9.
- 4 Merchant Shipping Act 1995 s 313(1).
- 5 Merchant Shipping Act 1995 s 313(1).

Persons have been regarded as seamen for the following purposes:

- 811 (1) wages: a woman employed as ship-keeper, steward and cook (*The Jane and Matilda* (1823) 1 Hag Adm 187); a crew engaged for a voyage in respect of which the ship had never left port (*Re Great Eastern Steamship Co, Williams' Claim* (1885) 5 Asp MLC 511); a storekeeper who had not been actually engaged for a voyage (*Thomson v Hart* (1890) 28 SLR 28); a stevedore (*R v City of London Court Judge and SS Michigan (Owners)* (1890) 25 QBD 339); and
- 812 (2) regulations in respect of the accommodation of seamen: lascars (*Peninsular and Oriental Steam Navigation Co v R* [1901] 2 KB 686, 9 Asp MLC 228).

Persons whose natural calling was the sea, but who were not at the time actually employed or engaged as seamen, were held not to be seamen within the meaning of the Conspiracy and Protection of Property Act 1875 s 16 (repealed): *R v Lynch and Jones* [1898] 1 QB 61, 8 Asp MLC 363, CCR. As to seamen's wages generally see PARA 464 et seq; and as to claims against seamen's wages for maintenance of dependants in particular see PARA 478. As to social security contributions for mariners see the Social Security Contributions and Benefits Act 1992 s 117; and **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 23.

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425. Power to grant exemptions to fishing vessels or to persons serving on them.

The Secretary of State¹ may grant exemptions from any requirements of the provisions relating to masters and seamen² or the provisions relating to the skipper and seamen of fishing vessels³ or of any regulations made thereunder⁴:

- 71 (1) with respect to any fishing vessel⁵ or to a fishing vessel of any description⁶; or
- 72 (2) with respect to any person or a person of any description serving in a fishing vessel or in a fishing vessel of any description⁷;

and nothing in any other provision of the provisions relating to masters and seamen or the provisions relating to the skipper and seamen of fishing vessels conferring a power to provide for or grant exemptions is to be taken to restrict the power conferred by these provisions⁸.

1 As to the Secretary of State see PARA 38.

2 Ie the Merchant Shipping Act 1995 Pt III (ss 24-84) (see PARA 423 et seq): see s 120.

3 Ie the Merchant Shipping Act 1995 Pt V Ch I (ss 109-120) (see PARA 458 et seq): see s 120.

4 Merchant Shipping Act 1995 s 120.

5 As to the meaning of 'fishing vessel' see PARA 230 note 9.

6 Merchant Shipping Act 1995 s 120(a).

7 Merchant Shipping Act 1995 s 120(b).

8 Merchant Shipping Act 1995 s 120.

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(2) THE MASTER

(i) Employment

426. Contract of service.

The contract of service between an owner and a master is a matter of agreement¹. However, by statute, in every contract of employment between the owner of a United Kingdom ship² and the master³ of or any seaman⁴ employed in the ship there is implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship that the owner, the master and every agent charged with the loading of the ship, the preparing of the ship for sea or the sending of the ship to sea must use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep the ship in a seaworthy condition for the voyage during the voyage⁵. There is, however, no liability on the owner where, owing to special circumstances, the sending of the ship to sea in an unseaworthy state was reasonable and justifiable⁶.

1 Reasonable notice of discharge must be given, having regard to the terms of the contract: *Green v Wright* (1876) 1 CPD 591, 3 Asp MLC 245, DC. See also *Savage v British India Steam Navigation Co* (1930) 46 TLR 294. The law will presume that terms agreed upon with regard to a first voyage apply, in default of further stipulation, to a second voyage during which the master's services are retained: *The Gananoque* (1862) Lush 448. If wrongfully discharged, a master is entitled to damages equal to his wages up to the end of the voyage, or until he obtains other employment: *The Camilla* (1858) Sw 312. See also *The Royalist* (1863) Brown & Lush 46. An action in rem for wrongful dismissal may be brought in the High Court: *The Great Eastern* (1867) LR 1 A & E 384; *The Blessing* (1878) 3 PD 35, 3 Asp MLC 561.

Although historically employment law originated in what was termed the law of master and servant, the modern terminology adopted is that of 'employer' and 'employee'; and 'contract of employment' is used rather than the older phrase 'contract of service' (save that the latter phrase is still used in social security and related legislation): see **EMPLOYMENT** vol 39 (2009) PARA 1.

2 As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230.

3 As to the meaning of 'master' under the Merchant Shipping Act 1995 see PARA 424.

4 As to the meaning of 'seaman' under the Merchant Shipping Act 1995 see PARA 424.

5 See the Merchant Shipping Act 1995 s 42(1), (2); and PARA 484.

6 See the Merchant Shipping Act 1995 s 42(3); and PARA 484.

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427. Appointment and removal of master.

In the ordinary course the master is appointed or removed by the owners of the ship or by other persons having control over her, but he may be appointed or removed by persons who in cases of emergency are in a position to exercise authority¹. Where the master dies at sea, his natural successor is the chief officer².

¹ *The Alexander* (1812) 1 Dods 278 (consignees); *The Tartar* (1822) 1 Hag Adm 1 (bottomry bondholder); *The Zodiac* (1825) 1 Hag Adm 320 (consul); *Bowen v Fox* (1829) 10 B & C 41 (previous master); *The Kennersley Castle* (1833) 3 Hag Adm 1 (underwriters); *The Cynthia* (1852) 16 Jur 748 (consul); *The Segredo (otherwise The Eliza Cornish)* (1853) 1 Ecc & Ad 36 (naval officer).

² See *The Favourite* (1799) 2 Ch Rob 232; *The Providence* (1825) 1 Hag Adm 391.

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428. Change of master during voyage.

If a person ceases to be the master¹ of a United Kingdom ship² during a voyage of the ship, he must deliver to his successor the documents relating to the ship or its crew which are in his custody³.

1 As to the meaning of 'master' under the Merchant Shipping Act 1995 see PARA 424.

2 As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230.

3 See the Merchant Shipping Act 1995 s 81(1); and PARA 449.

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(ii) Master's Authority and Liability

429. Master's general authority as owners' agent.

The master is the servant of the owners¹, and, in general, he will be their agent for those purposes for which he is employed, that is to say in all acts which are usual and necessary for the use and employment of the vessel². Whether or not, in particular circumstances, the master has authority to bind shipowners to contractual obligations depends upon a number of considerations³. He may have express authority, derived from express instructions, written or oral⁴. His authority may be implied from those instructions, or from the fact of his employment as master⁵, or it may be implied from the conduct of the owners⁶. In some cases, it may be conferred by the necessity of the circumstances⁷; and in others it may arise from subsequent ratification of an act which he was not authorised to perform but which he nevertheless purported to do as agent⁸.

¹ See *Hedley v Pinkney & Sons Steamship Co* [1892] 1 QB 58 at 62, 7 Asp MLC 135 at 137, CA, per Lord Esher MR; on appeal [1894] AC 222, 7 Asp MLC 483, HL (where the captain of a ship was held to be the owners' agent).

² *Grant v Norway* (1851) 10 CB 665 at 687; *McLean and McLean and Hope v Fleming* (1871) LR 2 Sc & Div 128 at 130, 1 Asp MLC 160 at 161, HL, per Lord Chelmsford.

³ This was formerly a jury question: *Williamson v Page* (1844) 1 Car & Kir 581. As to the derivation or extent of the authority of an agent generally see **AGENCY** vol 1 (2008) PARA 29 et seq.

⁴ *Messageries Imperiales Co v Baines* (1863) 7 LT 763 (express authority to charter a ship).

⁵ As to the extent of the master's authority which can be implied from the fact of his employment as master see PARA 430.

⁶ *The Great Eastern* (1868) LR 2 A & E 88.

⁷ *Webster v Seekamp* (1821) 4 B & Ald 352; *Grant v Norway* (1851) 10 CB 665. See also PARA 434.

⁸ *Moore v 'City of Malines' and Purvis Shipping Co Ltd* (1947) 81 Ll L Rep 96 (where a master's promise to pay 'short hand money' was ratified subsequently).

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430. Extent of master's implied authority as owners' agent.

The extent of the master's authority which may be implied from the fact of his employment as master varies according to the usages of trade and all the circumstances of the case, including the place where he is and the accessibility of the owners or other agents of the owners¹. Thus, a master may have authority to bind his owners by charterparty when he is in a foreign port and his owners are not there, and there is difficulty in communicating with them². He has, however, no implied authority to agree to the substitution of another voyage for one to which the owners have already bound themselves³, or to vary the contract by substituting another and a more distant port of loading, or a different quality or description of cargo⁴, although in minor matters he may vary the contract⁵.

It is the master's duty to obey his owner's instructions, and his implied authority cannot extend to any act which is inconsistent with the law of the land because obedience to the law is implied in his instructions⁶. An owner may by express instructions to his master limit or extend what might otherwise be his implied authority⁷, but third persons dealing with the master without notice of a limitation are not affected by it. If the matter is within the ordinary scope of a master's authority, the shipowners may be bound by his act⁸.

1 *The Fanny, The Mathilda* (1883) 5 Asp MLC 75, CA. The scope of the master's authority has declined considerably during the last 100 years. This is due partly to the development of communications technology which makes it possible in many circumstances for masters to consult their owners to obtain express instructions before binding them to contractual obligations. In addition, many shipowners have appointed representatives at foreign ports who are authorised to act on their behalf for many purposes which formerly would have been part of the master's duties. Many of the authorities referred to subsequently must be read in the light of these developments and changing circumstances. As to the extent of the authority of an agent generally see **AGENCY** vol 1 (2008) PARA 30 et seq.

2 *The Fanny, The Mathilda* (1883) 5 Asp MLC 75 at 78, CA, per Brett LJ. Cf, however, *The Sir Henry Webb* (1849) 13 Jur 639 (charterparty made to secure a debt).

3 *Burton v Sharpe* (1810) 2 Camp 529.

4 *Sickens v Irving* (1859) 7 CBNS 165. See also *Grant v Norway* (1851) 10 CB 665.

5 *Holman v Peruvian Nitrate Co* (1878) 5 R 657 (loading at a berth different from that named in charter so as to avoid delay).

6 *Earle v Rowcroft* (1806) 8 East 126 at 133 per Lord Ellenborough CJ; *Wilson v Rankin* (1865) 6 B & S 208. Where the owner decides to send a vessel on a voyage which might be dangerous because of quarrels between foreign countries, the master must not substitute another voyage instead of obeying his orders: *The Roebuck* (1874) 2 Asp MLC 387.

7 *Foreman & Co Proprietary Ltd v The Liddlesdale* [1900] AC 190, 9 Asp MLC 45, PC. When a person has notice of some limitation of the master's authority, he may still treat him as having the ordinary authority of a master in all matters not affected by the limitation: *Weston v Wright* (1841) 7 M & W 396.

8 *Manchester Trust v Furness* [1895] 2 QB 539, 8 Asp MLC 57, CA. As to ostensible authority and agency by estoppel see, however, **AGENCY** vol 1 (2008) PARA 25.

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431. Liability of master.

According to the principles of agency, a master will not be liable personally on a contract made in the course of the usual employment of the ship unless he has failed to disclose to the third person that he is an agent¹. When a master purports to act as agent, he is deemed to warrant that he has authority to do so; if he has no such authority to bind his owners, he may be personally liable to third persons who have relied upon that warranty, and in consequence suffered loss or damage, for breach of his warranty of authority².

The master is personally responsible to his owners for any injury or loss to the ship or cargo by reason of his negligence or misconduct, or for acting without authority³. He is in the position of a trustee for his owners and is bound to account for all profits made by the ship while under his command⁴.

1 See *Garnham v Bennett* (1728) 2 Stra 816; *Rich v Coe* (1777) 2 Cowp 636; and **AGENCY** vol 1 (2008) PARA 156 et seq.

2 See *Gordon v Hare* (1823) 1 LJOSKB 70. A master is liable upon bills of exchange drawn upon his owners if these are dishonoured upon presentation (*Watson and Parker v Gregory, The Cairo* [1908] WN 230, 11 Asp MLC 161); and he may be liable upon a bill of exchange drawn by him unless its terms relieve him of liability expressly or impliedly (*The Elmville* [1904] P 319, 9 Asp MLC 606).

3 *Fletcher v Braddick* (1806) 2 Bos & PNR 182; *Swainston v Garrick* (1833) 2 LJ Ex 255; *The Sir Charles Napier* (1880) 5 PD 73, 4 Asp MLC 231, CA; *Stumore, Weston & Co v Breen* (1886) 12 App Cas 698, HL. A master has no right to delegate his authority, and, except in the case of some higher authority (eg officers of the Royal Navy), he has no right to give up control except to one of his own officers: *The Bonvilston* (1914) 30 TLR 311 per Bagnall J. The fact that a ship is being navigated in an area and in circumstances in which pilotage is compulsory for it does not affect any liability of the owner or master of the ship for any loss or damage caused by the ship or by the manner in which it is navigated: see the Pilotage Act 1987 s 16; and PARA 579. See also *The Prinses Juliana* [1936] P 139, [1936] 1 All ER 685; *The Hans Hoth* [1953] 1 All ER 218, [1952] 2 Lloyd's Rep 341; *Workington Harbour and Dock Board v Towerfield (Owners)* [1951] AC 112, [1950] 2 All ER 414, HL.

4 *Diplock v Blackburn* (1811) 3 Camp 43; *Shallcross v Oldham* (1862) 5 LT 824.

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432. Exoneration of master; ship's protests.

A ship's protest is a declaration by the master when damage has been caused to a ship or her cargo, and is made before a notary or British consul at the first port of call¹. The object of a protest is to record promptly in an authentic form the circumstances in which loss or damage occurred so as to exonerate the master and his crew from blame². Although protests are not compulsory or essential in England³, they are often made in practice to support insurance claims by foreign cargo owners in countries where protests are required. In English courts they are not receivable in evidence, although they may be used in cross-examination⁴.

1 An important branch of a notary's practice deals with the drawing up and noting of ships' protests: see **LEGAL PROFESSIONS** vol 66 (2009) PARA 1458. As to British consular officers see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 30.

2 A 'note' of the protest is made in a book of the notary, stating the date, the name of the ship, the name of her master and the voyage, and protests against the perils of the seas causing damage: see **LEGAL PROFESSIONS** vol 66 (2009) PARA 1458. Thus, a protest would record details of an accident or heavy weather encountered on a voyage which might have caused loss of deck cargo or which might have prevented the ventilation of cargo or which might have delayed the voyage, or caused the vessel to put into a port of refuge.

3 *The Santa Anna* (1863) 32 LJPM & A 198. As to the meaning of 'England' see PARA 17 note 2.

4 *Senat v Porter* (1797) 7 Term Rep 158; *Appleton v Lord Braybrook* (1817) 6 M & S 34; *Black v Lord Braybrook* (1817) 6 M & S 39; *The Betsey Caines* (1826) 2 Hag Adm 28; *R v Scriveners' Co* (1830) 10 B & C 511; *Brown v Thornton* (1837) 6 Ad & El 185.

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(iii) Master's Authority to make Contracts

433. General instances of master's authority to contract.

The master of a ship has implied authority to contract to carry goods on board¹, to assign freight and to authorise the collection of freight², but he cannot bind his owners to carry freight free³, or contract with the freighter to carry at a lower freight than that agreed upon with the owners⁴, or authorise its payment in an unusual manner⁵. He may sign bills of lading for goods put on board⁶, and acknowledge the weight, value and condition of such goods⁷. Shipowners are bound by statements by the master in the bill of lading as to the condition of goods⁸ and as to whether freight is payable or not⁹.

The master has implied authority to do whatever is necessary and prudent for the preservation of ship and cargo¹⁰. He has authority to contract for the services of a crew at an increased remuneration if the risks of war arise and to discharge the crew from their obligations under an existing contract of employment¹¹. He has the authority to conclude contracts for salvage operations on behalf of the owner of the vessel and to conclude such contracts on behalf of the owner of the property on board the vessel¹². If he is performing a charterparty which does not expressly bestow authority, he may deviate to save life, but not to save property¹³. The master has implied authority to bind the shipowner to pay for repairs, stores, provisions, disbursements paid and money advanced in circumstances necessary for the use and employment of the ship¹⁴.

1 *Grant v Norway* (1851) 10 CB 665.

2 *HG Harper & Co v J Bland & Co Ltd* (1914) 84 LJB 738, 13 Asp MLC 49.

3 *Dewell v Moxon* (1808) 1 Taunt 391; *Walshe v Provan* (1853) 8 Exch 843 at 850.

4 *Pickernell v Jauberry* (1862) 3 F & F 217; *Pearson v Göschen* (1864) 17 CBNS 352.

5 *Walshe v Provan* (1853) 8 Exch 843 (making freight payable at port of loading instead of port of discharge); *Reynolds v Jex* (1865) 7 B & S 86 (making freight payable to ship's agents so that they were able to set it off against a debt due in respect of another vessel of the owner).

6 The master has no authority to sue for freight (*Repetto v Millar's Karri and Jarrah Forests Ltd* [1901] 2 KB 306, 9 Asp MLC 215) or to begin an action on behalf of the owners of cargo laden on board his ship (*The Glenluce* (1930) 170 LT Jo 399). As to signing bills of lading see further **CARRIAGE AND CARRIERS**.

7 *Grant v Norway* (1851) 10 CB 665. A bill of lading representing goods to have been shipped or received for shipment, signed by the master and in the hands of the lawful holder acting in good faith, is conclusive evidence of such shipment or receipt as against the carrier: see the Carriage of Goods by Sea Act 1924 s 4; and **CARRIAGE AND CARRIERS**.

8 *Compania Naviera Vasconzada v Churchill and Sim* [1906] 1 KB 237, 10 Asp MLC 177.

9 See *Howard v Tucker* (1831) 1 B & Ad 712. See also **ESTOPPEL** vol 16(2) (Reissue) PARA 1054. As to charterparties generally see **CARRIAGE AND CARRIERS**.

10 *Austin Friars Steamship Co Ltd v Spillers and Bakers Ltd* [1915] 1 KB 833; affd [1915] 3 KB 586, 13 Asp MLC 162, CA (a general average act). As to the master's authority to hypothecate a ship and freight see PARA 437; as to his authority to tranship and to jettison see PARAS 438, 439; and as to his authority to sell ship and

cargo see PARA 440 et seq. Without authority the master may not insure the ship as this is not a matter of necessity: *The Serafina* (1864) Brown & Lush 277.

11 *Liston v Carpathian (Owners)* [1915] 2 KB 42, 13 Asp MLC 70.

12 See the International Convention on Salvage (London, 28 April 1989; Cm 1526) art 6(2); and PARA 897. As to the International Convention on Salvage 1989 generally see PARA 8; and as to its implementation by the Merchant Shipping (Salvage and Pollution) Act 1994 s 1(1), Sch 1 Pt I (repealed) (see now the Merchant Shipping Act 1995 Sch 11 Pt I) see PARA 891 et seq.

13 *Scaramanga v Stamp* (1880) 4 Asp MLC 295, CA.

14 As to necessities see PARA 434.

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434. Master's authority to contract for necessities.

The master of a vessel has implied authority to contract as agent on behalf of the shipowner for such things as are necessary for the use and employment of the ship¹. Thus, a shipowner is liable for necessary repairs done to a ship by the master's order². The repairs must be such as are fit and proper for the vessel on her voyage³ and such as a prudent owner himself, if present, would have ordered⁴. The master's authority may also extend to contracts for the supply of anchors, cables, rigging⁵, fuel⁶, provisions and clothing for the crew⁷, copper sheathing⁸, a screw propeller⁹, or for the advance of money to pay for necessities¹⁰, or money to pay off a shipwright's lien for necessary repairs¹¹, or to pay towage and harbour charges¹² and such other things as a prudent owner would have authorised the master to order if he had been present at the time¹³. It must be shown not only that the money borrowed or goods supplied were reasonably necessary according to the ordinary course of prudent conduct, but also that it was reasonably necessary that the master should obtain or order them on the owner's credit¹⁴. The burden of proof lies upon the creditor who seeks to establish the shipowner's liability¹⁵.

1 *Grant v Norway* (1851) 10 CB 665; *The Pontida* (1884) 9 PD 177, 5 Asp MLC 330, CA. The master has implied authority to sign all documents necessary for the proper performance of his duties: *Bahamas Oil Refining Co v Kristiansands Tankrederie A/S and Shell International Marine Ltd, The Polyduke* [1978] 1 Lloyd's Rep 211. As to the meaning of 'necessaries' see PARA 1033 note 1.

2 *Webster v Seekamp* (1821) 4 B & Ald 352.

3 *Webster v Seekamp* (1821) 4 B & Ald 352.

4 *Webster v Seekamp* (1821) 4 B & Ald 352. See also *The Riga* (1872) LR 3 A & E 516, 1 Asp MLC 246.

5 *The Alexander* (1842) 1 Wm Rob 346; *The Sophie* (1842) 1 Wm Rob 368.

6 *The West Friesland* (1859) Sw 454; *The Comtesse de Fregeville* (1861) Lush 329; *The Mecca* [1895] P 95, 7 Asp MLC 529, CA.

7 *The NR Gosfabrick* (1858) Sw 344; *The William F Safford* (1860) Lush 69.

8 *The Perla* (1858) Sw 353; *The Turliani* (1875) 2 Asp MLC 603.

9 *The Flecha* (1854) 1 Ecc & Ad 438 at 441.

10 *Arthur v Barton* (1840) 6 M & W 138 at 144; *The Sophie* (1842) 1 Wm Rob 368; *The Albert Crosby* (1870) LR 3 A & E 37; *The Anna* (1876) 1 PD 253, 3 Asp MLC 237, CA; *The Onni* (1860) Lush 154. It is often to the advantage of the owner that the master should have cash to pay for necessities for he may then get better terms: *Edwards v Havill* (1853) 14 CB 107 at 111. The lender may recover from the shipowner only the amount actually necessary for the purposes of the ship: see *Cary v White* (1710) 2 Eq Cas Abr 722, HL; *Mackintosh v Mitcheson* (1849) 4 Exch 175; *The Pontida* (1884) 9 PD 177, 5 Asp MLC 330, CA. The money advanced must be expressed to be for those purposes: *Thacker v Moates* (1831) 1 Mood & R 79.

11 *The Albert Crosby* (1870) LR 3 A & E 37.

12 *The St Lawrence* (1880) 5 PD 250. As to towage see PARA 587 et seq; and as to harbour charges see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 666 et seq.

13 *Webster v Seekamp* (1821) 4 B & Ald 352; *The Riga* (1872) LR 3 A & E 516, 1 Asp MLC 246.

14 *Gunn v Roberts* (1874) LR 9 CP 331, 2 Asp MLC 250 per Brett J; see also *Gordon v Hare* (1823) 1 LJOSKB 70; *Mitcheson v Oliver* (1855) 5 E & B 419, Ex Ch.

15 *Mackintosh v Mitcheson* (1849) 4 Exch 175; and see *The Alexander* (1842) 1 Wm Rob 346; *The Sophie* (1842) 1 Wm Rob 368.

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435. Master's lien and right of indemnity.

When a master acting within the scope of his authority makes disbursements or accepts personal liabilities for the benefit of the shipowners, he is entitled to be indemnified by them¹. The master has a statutory lien upon the ship for his remuneration, liabilities and disbursements². This lien only arises when the disbursements or liabilities were made or incurred by the master acting as master and being entitled to pledge the owner's credit³. The disbursement or liability must also have been necessary for the protection of the owner's interest⁴ in the circumstances where the master could not communicate with the owner⁵.

1 *Huntley v Sanderson* (1833) 1 Cr & M 467; *The James Seddon* (1866) LR 1 A & E 62. As to the master's authority and liability generally see PARA 429 et seq.

2 See the Merchant Shipping Act 1995 s 41; and PARA 477. Such a claim may be enforced by an action in rem: see the Supreme Court Act 1981 ss 20(2)(p), 21(3); and PARA 127.

3 *The Ripon City* [1897] P 226, 8 Asp MLC 304.

4 *Morgan v Castlegate Steamship Co, The Castlegate* [1893] AC 38, 7 Asp MLC 284, HL; *The Orienta* [1895] P 49, 7 Asp MLC 529, CA; *The Turgot* (1886) 11 PD 21.

5 *The Orienta* [1895] P 49, 7 Asp MLC 529, CA. As to liens on ships, freight and cargo see PARA 1014 et seq.

UPDATE

435 Master's lien and right of indemnity

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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436. Owner's liability to third persons.

The owner is bound personally by every contract made by the master when acting as his agent within the scope of his authority¹, even if the vessel is subject to a time charterparty under which the contract is expressed to be to the charterer's account² and even if the creditor knew of the existence of the time charterparty³. This liability in personam remains notwithstanding a change in the ownership of the ship⁴.

The creditor may also be entitled to enforce his claim against the shipowner by an action in rem⁵ if the contract made by the master was in respect of goods or materials supplied to a ship for her operation or maintenance or in respect of the construction, repair or equipment of a ship or dock charges or dues⁶. Such a claimant may institute proceedings in the High Court and, if necessary, arrest the ship named in the action⁷.

1 As to the scope of this authority see PARA 429 et seq.

2 *The Tolla* [1921] P 22.

3 *The Tolla* [1921] P 22.

4 *Trewhella v Rowe* (1809) 11 East 435; *Mackenzie v Pooley* (1856) 11 Exch 638.

5 As to the jurisdiction in rem in respect of such a claim see the Supreme Court Act 1981 s 21(4); and PARA 93.

6 See the Supreme Court Act 1981 s 20(2)(m), (n); and PARA 126.

7 As to the procedure for arresting property in a claim in rem see PARA 161 et seq.

UPDATE

436 Owner's liability to third persons

NOTES 5, 6--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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(iv) Master's Authority to hypothecate Ship and Freight

437. Bottomry.

The master has authority in circumstances of unforeseen necessity or distress to pledge the ship and freight to raise the necessary funds for the voyage¹ by a contract called 'bottomry', the bottom or keel of the ship being figuratively used to express the whole body of the ship².

There is no settled form for the bottomry contract. It has usually taken the form of a bond³ by which the master states the occasion for resorting to bottomry and pledges himself the ship and freight, and sometimes the cargo, for the repayment of the principal and interest on the safe arrival of the ship at the end of her voyage on such conditions as to risk as may be agreed upon. Where the cargo alone is hypothecated, the instrument is called a respondentia bond. Bottomry and respondentia are obsolete in practice⁴.

1 *The Gratitude* (1801) 3 Ch Rob 240; *The Jacob* (1802) 4 Ch Rob 245; *Smith v Bank of New South Wales, The Staffordshire* (1872) LR 4 PC 194, 1 Asp MLC 365. As to the mortgage of a ship and freight see **MORTGAGE** vol 77 (2010) PARAS 246, 247; and as to pledges generally see **PLEDGES AND PAWNS** vol 36(1) (2007 Reissue) PARA 1 et seq.

2 In practice, such transactions are now obsolete, but see note 4.

3 See *Menetone v Gibbons* (1789) 3 Term Rep 267. Sometimes it takes the form of a bill of sale: see *Johnson v Shippen* (1704) 2 Ld Raym 982. Bills of exchange drawn by the master on the owner as security for money advanced to the master, even if accompanied by an oral agreement that the ship is to be pledged, are not instruments of bottomry: *Ex p Halkett* (1814) 3 Ves & B 135; *Miller & Co v Potter, Wilson & Co* (1875) 3 R 105. Bottomry bonds have been described as of 'a high and privileged nature', 'favoured instruments' to be liberally protected: *The Alexander* (1812) 1 Dods 278; *The Kennersley Castle* (1833) 3 Hag Adm 1 at 7; *The Reliance* (1833) 3 Hag Adm 66 at 74. See, however, *The Vibilia* (1838) 1 Wm Rob 1 at 5; *The Mary Ann* (1846) 4 Notes of Cases 376.

4 They are, however, still part of the jurisdiction in rem and in personam of the Admiralty court: see the Supreme Court Act 1981 s 20(1)(a), (2)(r); and PARA 134.

UPDATE

437 Bottomry

NOTE 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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(v) Master's Authority to tranship or jettison Cargo

438. Transhipment.

It is the master's duty to convey the cargo to the place of destination by any reasonable and practical method. Where the ship in the course of the voyage has suffered damage and cannot be repaired at all or not without very great loss of time or expense, the master is at liberty to tranship the cargo to another vessel to be forwarded to its original destination¹. He is not bound to do this²; nor is he under an absolute obligation to the cargo owner to forward the cargo in the original vessel, although in his capacity of agent to the shipowner it is his duty to do so if he can³.

1 See *Shipton v Thornton* (1838) 9 Ad & El 314; *Hansen v Dunn* (1906) 11 Com Cas 100.

2 *The Hamburg* (1864) Brown & Lush 253, PC.

3 *Benson v Chapman* (1849) 2 HL Cas 696; *The Bahia* (1864) Brown & Lush 292; *The Hamburg* (1864) Brown & Lush 253, PC; *Atwood v Sellar & Co* (1879) 4 QBD 342, 4 Asp MLC 153 (on appeal (1880) 5 QBD 286, 4 Asp MLC 283, CA). The master is under a duty, implied from the contract of affreightment, to do his best to protect the interests of the cargo owners if the voyage is interrupted by disaster: *Atwood v Sellar & Co*. As to transhipment see also **CARRIAGE AND CARRIERS**.

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439. Jettison to remove danger.

In case of imminent danger to the ship or to the lives on board the ship, the master may jettison such amount of cargo as may be necessary to remove the danger. In extreme cases, he may jettison the whole of the cargo; and, when jettisoning, he may select what articles he pleases, and may determine what quantity¹.

If the master jettisons more cargo than is necessary to remedy the danger to the ship, the shipowner is liable to make good the full value to the cargo owner, and the shipowner is similarly liable when cargo has been rightly jettisoned in case of necessity, but at a time when there has been a deviation from the agreed voyage².

Whenever cargo is jettisoned from necessity, its owners are entitled to average contribution unless the cargo was carried on deck and there is no custom justifying such carriage³.

1 *The Gratitude* (1801) 3 Ch Rob 240 at 258. Jettison by the master in case of panic does not relieve the shipowner from liability to the cargo owner for the value of his goods: *Notara v Henderson* (1872) LR 7 QB 225 at 236, 1 Asp MLC 278 at 282, Ex Ch.

2 See *Notara v Henderson* (1872) LR 7 QB 225, 1 Asp MLC 278, Ex Ch. As to general responsibility for saving property cf **CARRIAGE AND CARRIERS**. See also *Leduc & Co v Ward* (1888) 20 QBD 475, CA; *Glynn v Margetson & Co* [1893] AC 351, 7 Asp MLC 366, HL; *The Dunbeth* [1897] P 133, 8 Asp MLC 284; *Joseph Thorley Ltd v Orchis Steamship Co Ltd* [1907] 1 KB 660, 10 Asp MLC 431, CA.

3 *Wright v Marwood* (1881) 7 QBD 62, 4 Asp MLC 451, CA; *Apollinaris Co v Nord Deutsche Insurance Co* [1904] 1 KB 252 at 259, 9 Asp MLC 526 at 527. The fact that deck cargo is carried at merchant's risk does not relieve the shipowner from contributing in general average: *Burton v English* (1883) 12 QBD 218, 5 Asp MLC 187, CA. As to general average see also **CARRIAGE AND CARRIERS**; and **INSURANCE** vol 25 (2003 Reissue) PARA 420 et seq.

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(vi) Master's Authority to sell Ship or Cargo

440. Sale of ship.

By virtue of his employment, the master has not merely those powers which are necessary for the navigation of the ship and the conduct of the adventure to a safe termination, but also in case of extreme necessity¹, as when such termination becomes impossible and no prospect remains of bringing the vessel home, authority to do the best for all concerned, and, if necessary, to sell the ship². Before resorting to a sale, he is bound, if money is what is required to enable the voyage to be completed, seriously and deliberately to try every other expedient to raise the necessary funds³.

1 As to the meaning of 'necessity' see PARA 441.

2 *Robertson v Caruthers* (1819) 2 Stark 571; *Doyle v Dallas* (1831) 1 Mood & R 48; *Hunter v Parker* (1840) 7 M & W 322 at 342; *Knight v Faith* (1850) 15 QB 649; *Lindsay v Leathley* (1863) 11 LT 194; *Cobequid Marine Insurance Co v Barteaux* (1875) LR 6 PC 319, 2 Asp MLC 536; *Hall v Jupe* (1880) 4 Asp MLC 328. For examples where a sale was held not to be necessary see *East India Co v Ekines* (1718) 2 Bro Parl Cas 382; *Maeburn v Leckie* (1822) (cited in Abbott's Law of Merchant Ships and Seamen (14th Edn) 15, 16).

3 *Underwood v Robertson* (1815) 4 Camp 138.

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441. Meaning of 'necessity'.

It is impossible to give an exact and concise definition of 'necessity', for it will depend upon all the circumstances of the case¹. It must be impracticable for the master to communicate with the owners, and therefore modern means of communication make it a matter of extreme rarity for a master to act upon his authority to sell. The sale must be in good faith and for the benefit of all concerned, so that the prudent uninsured owner would have sold the ship; there must also be an urgent necessity for the sale². The burden of proof that the sale was necessary lies on the person seeking to support the sale, on the purchaser as against the owner³, and on the owner as against the insurers⁴.

1 *The Victor* (1865) 13 LT 21.

2 *Green v Royal Exchange Assurance Co* (1815) 6 Taunt 68; *Somes v Sugrue* (1830) 4 C & P 276; *Domett v Young* (1842) Car & M 465; *The Margaret Mitchell* (1858) Sw 382 at 386; *Cobequid Marine Insurance Co v Barteaux* (1875) LR 6 PC 319, 2 Asp MLC 536; *The Uniao Vencedora (otherwise The Gipsy)* (1864) 11 LT 351.

3 *The Glasgow (otherwise The Ya Macraw)* (1856) Sw 145; *The Margaret Mitchell* (1858) Sw 382 at 386; *The Australia* (1859) Sw 480 at 484, PC.

4 *Domett v Young* (1842) Car & M 465.

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442. Foreign judgment.

A judgment in rem of a foreign court, having jurisdiction in the matter, ordering the sale of the ship is binding even though all the facts were not before the court, provided that the judgment was not obtained by fraud¹. If, however, in a foreign country the master, for the purpose of evading the effect of the restrictions on his powers of sale, either fraudulently procures the condemnation and sale of the ship as unfit for sea from some court or judge having jurisdiction in maritime matters, or without fraud procures such a condemnation from a court or judge not having jurisdiction, or from an official, these findings are not binding in the English courts, and the question of the necessity for sale may be inquired into and the sale declared void².

¹ See **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 162.

² *Hayman v Molton* (1803) 5 Esp 65; *Reid v Darby* (1808) 10 East 143; *Hunter v Prinsep* (1808) 10 East 378; *The Warrior* (1818) 2 Dods 288; *Morris v Robinson* (1824) 3 B & C 196; *The Segredo (otherwise The Eliza Cornish)* (1853) 1 Ecc & Ad 36; *The Margaret Mitchell* (1858) Sw 382; *The Australia* (1859) Sw 480, PC. See also **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 162.

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443. Disputing the sale.

A master who is compelled to sell may receive the proceeds and give a good discharge¹. If his owner wishes to impeach the sale, he must act promptly². If he receives the purchase money knowing the circumstances in which the vessel was sold, and intending to appropriate the money to his own use, he is estopped from disputing the sale³.

1 *Ireland v Thomson* (1847) 4 CB 149.

2 *The Australia* (1859) Sw 480, PC.

3 *Hunter v Parker* (1840) 7 M & W 322 at 342; *The Margaret Mitchell* (1858) Sw 382; *The Bonita* (1861) Lush 252.

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444. Sale of cargo.

A sale of cargo by the master is a matter which requires the utmost caution on his part, for the cargo has been entrusted to him for the express purpose of being carried to its destination¹. When it becomes necessary to provide funds to enable the ship to reach her destination, and this can only be done by hypothecation of the cargo or a sale of a part of it, a sale is allowed, but it must be limited to a part of the cargo, for a sale of the whole would defeat the very purpose for which the master has been entrusted with the cargo, and this purpose he is bound to accomplish by every reasonable and practicable method².

1 As to the sale of cargo see **CARRIAGE AND CARRIERS**.

2 *Van Omeron v Dowick* (1809) 2 Camp 42. See also **CARRIAGE AND CARRIERS**.

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445. Rights of cargo owner.

Where cargo is improperly sold by the master, the cargo owner may sue the master or shipowner¹ or both². Alternatively, he may recover the cargo from the purchaser, provided that the purchaser has not acquired a good title to it by the law of the place where he bought it³, for, although the master's authority to sell is determined by the law of the country to which the vessel belongs⁴, the purchaser's title is determined by the law of the country in which the sale is effected.

1 *Wilson v Dickson* (1818) 2 B & Ald 2; *Freeman v East India Co* (1822) 5 B & Ald 617; *Cannan v Meaburn* (1823) 1 Bing 243; *Morris v Robinson* (1824) 3 B & C 196 (where a purchaser under an order made without jurisdiction was liable in a case of failure to recover from the owner).

2 *Tronson v Dent* (1853) 8 Moo PCC 419; *Australasian Steam Navigation Co v Morse* (1872) LR 4 PC 222, 1 Asp MLC 407; *Hopper v Burness* (1876) 1 CPD 137, 3 Asp MLC 149. The cargo owner is entitled to the full amount received at the sale without deduction of pro rata freight, even though the goods realised more than if sold at the port of destination: *Hopper v Burness*.

3 *Cammell v Sewell* (1860) 5 H & N 728, Ex Ch. See also **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 163.

4 *Lloyd v Guibert* (1865) LR 1 QB 115, Ex Ch; *Droege v Suart, The Karnak* (1869) LR 2 PC 505; *The Gaetano and Maria* (1882) 7 PD 137, 4 Asp MLC 535, CA. See also **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 352.

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(vii) Powers exercisable in the interests of Safety, Good Order and Discipline

446. Master's power to exclude drunken passengers from certain passenger ships.

The master¹ of any ship² may refuse to receive on board any person who by reason of drunkenness or otherwise is in such a state, or misconducts himself in such a manner, as to cause annoyance or injury to passengers on board, and, if any such person is on board, may put him on shore at any convenient place³.

A person so refused admittance, or so put on shore, is not entitled to the return of any fare he has paid⁴.

1 As to the meaning of 'master' see PARA 424.

2 I.e. any ship, whether or not a United Kingdom ship, carrying more than 12 passengers and employed in carrying passengers between places in the limited European trading area as for the time being defined in regulations made under the Merchant Shipping Act 1995 s 47 (see PARA 490) by the Secretary of State: see s 102(3). As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3. As to the Secretary of State see PARA 38.

3 Merchant Shipping Act 1995 s 102(1).

4 Merchant Shipping Act 1995 s 102(2).

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447. Master's power of arrest.

The master¹ of any United Kingdom ship² may cause any person on board the ship to be put under restraint if and for so long as it appears to him necessary or expedient in the interest of safety or for the preservation of good order or discipline on board the ship³.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping Act 1995 s 105.

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(viii) Master's Duty to assist Aircraft in Distress

448. Duty to assist aircraft in distress.

The master of a ship¹, on receiving at sea a signal of distress from an aircraft² or information from any source that an aircraft is in distress, must proceed with all speed to the assistance of the persons in distress (informing them, if possible, that he is doing so), unless³:

- 73 (1) he is unable, or in the special circumstances of the case considers it unreasonable or unnecessary to do so⁴; or
- 74 (2) he is released from the duty by being informed by the persons in distress (or by the master of any ship that has reached the persons in distress) that assistance is no longer required⁵.

If a master fails to comply with the duty to assist⁶, he commits an offence⁷.

Compliance by the master of a ship with the duty to assist⁸ does not affect his right, or the right of any other person, to salvage⁹.

1 The duties imposed on the master of a ship by the Merchant Shipping Act 1995 s 93(1) apply to the masters of United Kingdom ships and to the masters of foreign ships when in United Kingdom waters: s 93(3) (amended by SI 1998/1691). As to the meaning of 'master' see PARA 424; as to the meaning of 'ship' see PARA 229; and as to the meaning of 'foreign', in relation to a ship, see PARA 19 note 2. As to the meaning of 'United Kingdom ship' see PARA 230; and as to the meaning of 'United Kingdom waters' see PARA 48 note 10.

2 As to the duty to assist ships and hovercraft in distress see the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874), with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277) (see PARA 8), especially Ch V, to which effect is given by the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473 (as to which see PARA 641).

3 Merchant Shipping Act 1995 s 93(1) (amended by SI 1998/1691).

4 Merchant Shipping Act 1995 s 93(1) (as amended: see note 3).

5 Merchant Shipping Act 1995 s 93(1) (as amended: see note 3), Merchant Shipping Act 1995 s 93(5) (amended by SI 1998/1691).

6 In compliance with the provisions of the Merchant Shipping Act 1995 s 93(1)-(5) (see the text and notes 1-5): see s 93(6).

7 See the Merchant Shipping Act 1995 s 93(6); and PARA 1197.

8 In compliance with the provisions of the Merchant Shipping Act 1995 s 93: see s 93(7).

9 Merchant Shipping Act 1995 s 93(7).

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(ix) Master's Duty where he ceases to be Master during Voyage

449. Master's duty to deliver documents where he ceases to be master during voyage.

If a person ceases to be the master¹ of a United Kingdom ship² during a voyage of the ship, he must deliver to his successor the documents relating to the ship or its crew which are in his custody³.

If without reasonable excuse the master of such a ship fails to comply with this requirement⁴, he commits an offence⁵.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping Act 1995 s 81(1). As to the documents mentioned in the text see PARAS 254 et seq, 450 et seq. As to the application of s 81 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

4 Ie if he fails to comply with the Merchant Shipping Act 1995 s 81(1) (see the text and notes 1-3): see s 81(2).

5 See the Merchant Shipping Act 1995 s 81(2); and PARA 1158.

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(3) ENGAGEMENT AND DISCHARGE OF CREWS

(i) Engagement of Crews

A. CREW AGREEMENTS

450. General provision for crew agreements.

An agreement in writing must¹ be made between each person employed as a seaman² in a United Kingdom ship³ and the person employing him and must be signed both by him and by or on behalf of them⁴.

The agreements so made with the several persons employed in a ship must be contained in one document (a 'crew agreement')⁵ except that in such cases as the Secretary of State⁶ may approve⁷:

- 75 (1) the agreements to be so made with the persons employed in a ship may be contained in more than one crew agreement⁸; and
- 76 (2) one crew agreement may relate to more than one ship⁹.

The provisions and form of a crew agreement must be of a kind approved by the Secretary of State¹⁰; and different provisions and forms may be so approved for different circumstances¹¹.

Subject to any exemptions or variations which may be allowed and any liability for contraventions¹², a crew agreement must be carried in the ship to which it relates whenever the ship goes to sea¹³.

The Secretary of State may make regulations providing for exemptions from the requirements of the general provision for crew agreements¹⁴:

- 77 (a) with respect to such descriptions of ship as may be specified in the regulations or with respect to voyages in such areas or such description of voyages as may be so specified¹⁵; or
- 78 (b) with respect to such descriptions of seamen as may be specified in the regulations¹⁶;

and the Secretary of State may grant other exemptions from those requirements, whether with respect to particular seamen or with respect to seamen employed by a specified person or in a specified ship or in the ships of a specified person, in cases where the Secretary of State is satisfied that the seamen to be employed otherwise than under a crew agreement will be adequately protected¹⁷.

Where, but for an exemption granted by the Secretary of State, a crew agreement would be required to be carried in a ship or a crew agreement carried in the ship would be required to contain an agreement with a person employed in a ship, the ship must carry such documents evidencing the exemption as the Secretary of State may direct¹⁸.

Regulations so made may enable ships required so to carry a crew agreement to comply with the requirement by carrying a copy thereof, certified in such manner as may be provided by the regulations¹⁹.

If a ship goes to sea or attempts to go to sea in contravention²⁰ of the requirements of the general provision for crew agreements, the master²¹, or the person employing the crew, commits an offence²²; and the ship, if in the United Kingdom, may be detained²³.

1 le except as provided under the Merchant Shipping Act 1995 s 25(5) (see the text and notes 14-17): see s 25(1).

2 As to the meaning of 'seaman' see PARA 424.

3 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping Act 1995 s 25(1). As to the application of s 25 see PARA 423. Crew agreements, lists of crews made under s 78 (see PARA 534) and notices given under Pt III (ss 24-84) of additions to or changes in crew agreements and lists of crews, are admissible in evidence and, when in the custody of the Registrar General of Shipping and Seamen, are open to public inspection: see s 287(1)(c); and PARA 1109. As to the Registrar General of Shipping and Seamen see PARA 61.

The Employment Rights Act 1996 ss 1-7 (right to written statements of terms and conditions of employment) (see **EMPLOYMENT** vol 39 (2009) PARA 94 et seq), Pt II (ss 13-27) (deductions from wages) (see **EMPLOYMENT** vol 39 (2009) PARA 230 et seq) and ss 86-91 (rights to minimum notice and rights during notice) (see **EMPLOYMENT** vol 40 (2009) PARA 692 et seq) do not apply to a person employed as a seaman in a ship registered in the United Kingdom under a crew agreement the provisions and form of which are of a kind approved by the Secretary of State: s 199(1). As to the Secretary of State for these purposes see **EMPLOYMENT** vol 39 (2009) PARA 5. Nor do ss 8-10 (right to itemised pay statement) (see **EMPLOYMENT** vol 39 (2009) PARA 99), ss 50-54 (time off work for public duties, looking for work and making arrangements for training) (see **EMPLOYMENT** vol 39 (2009) PARA 303 et seq) and Pt XII (ss 182-190) (insolvency of employer) (see **EMPLOYMENT** vol 39 (2009) PARAS 557-560) apply to employment as a merchant seaman: s 199(4). For these purposes, 'employment as a merchant seaman': (1) does not include employment in the fishing industry or employment on board a ship otherwise than by the owner, manager or charterer of that ship except employment as a radio officer (s 199(5)(a)); but (2) subject to that, includes: (a) employment as a master or a member of the crew of any ship (s 199(5)(b)(i)); (b) employment as a trainee undergoing training for the sea service (s 199(5)(b)(ii)); and (c) employment in or about a ship in port by the owner, manager or charterer of the ship to do work of the kind ordinarily done by a merchant seaman on a ship while it is in port (s 199(5)(b)(iii)).

Certain provisions of the Employment Rights Act 1996 apply to employment on board a ship registered in the register maintained under the Merchant Shipping Act 1995 s 8 (central register of British ships) (as to which see PARA 254) if and only if:

813 (i) the ship's entry in the register specifies a port in Great Britain as the port to which the vessel is to be treated as belonging (Employment Rights Act 1996 s 199(7)(a) (s 199 (7), (8) added by the Employment Relations Act 1999 s 32(4)));

814 (ii) under his contract of employment the person employed does not work wholly outside Great Britain (Employment Rights Act 1996 s 199(7)(b) (as so added)); and

815 (iii) the person employed is ordinarily resident in Great Britain (s 199(7)(c) (as so added)).

As to the meaning of 'Great Britain' see PARA 17 note 3. As to the meaning of 'contract of employment' for these purposes see **EMPLOYMENT** vol 39 (2009) PARA 2. As to ordinary residence see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 134; **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 58. The provisions of the Employment Rights Act 1996 which do not so apply are: ss 8-10 (right to itemised pay statement) (see **EMPLOYMENT** vol 39 (2009) PARA 99); Pt II (ss 13-27) (deductions from wages) (see **EMPLOYMENT** vol 39 (2009) PARA 230 et seq); Pt III (ss 28-35) (guarantee payments) (see **EMPLOYMENT** vol 39 (2009) PARA 237 et seq); Pt V (ss 43M-49A) (protection from suffering detriment in employment) (see **EMPLOYMENT** vol 39 (2009) PARA 544 et seq); Pt VI (ss 50-63C) (time off for work) (see **EMPLOYMENT** vol 39 (2009) PARA 303 et seq) apart from ss 58-60 (occupational pension scheme trustees) (see **EMPLOYMENT** vol 39 (2009) PARAS 314-315); Pt VII (ss 64-70) (suspension from work) (see **EMPLOYMENT** vol 39 (2009) PARA 316 et seq); Pt VIII (ss 71-80E) (maternity etc leave) (see **EMPLOYMENT** vol 39 (2009) PARA 323 et seq); Pt VIIIA (ss 80F-80I) (flexible leave) (see **EMPLOYMENT** vol 39 (2009) PARAS 83-86); s 92 (right to written statement of reasons for dismissal) (see **EMPLOYMENT** vol 40 (2009) PARA 712); s 93 (complaint to employment tribunal) (see **EMPLOYMENT** vol 40 (2009) PARA 713); and Pt X (ss 94-134A) (unfair dismissal) (see **EMPLOYMENT** vol 40 (2009) PARA 714 et seq): Employment Rights Act 1996 s

199(8) (as so added; amended by the Employment Act 2002 Sch 7 paras 24, 44(1), (3)). See *Wood v Cunard Line Ltd* [1991] ICR 13, [1990] IRLR 281, CA (person working on a British ship which never entered United Kingdom waters held to be working wholly outside Great Britain, even though himself British, paid in sterling (with tax and national insurance contributions deducted) and travelling back to the United Kingdom for holidays). The Employment Rights Act 1996 s 199(7) preserves the position of persons working on registered ships, despite the general repeal of the jurisdictional rules in the Employment Rights Act 1996 s 196 (repealed), which originally contained an equivalent provision: see **EMPLOYMENT** vol 39 (2009) PARA 139. The predecessor of this provision, ie the Employment Protection (Consolidation) Act 1978 s 141(5) (repealed), was held not to apply where a seaman was employed under a contract which required him to work on non-British, as well as British, ships: *Royle v Globtik Management Ltd* [1977] ICR 552, EAT.

As to employment rights for masters and crew members of a fishing vessel see PARA 458 note 4. See also **EMPLOYMENT** vol 39 (2009) PARA 140.

5 In the Merchant Shipping Act 1995 Pt III (ss 24-84) (see PARAS 423, 449, 451 et seq) 'crew agreement' has the meaning given to it by s 25(2): see s 84(1).

6 As to the Secretary of State see PARA 38.

7 Merchant Shipping Act 1995 s 25(2).

8 Merchant Shipping Act 1995 s 25(2)(a).

9 Merchant Shipping Act 1995 s 25(2)(b).

10 Merchant Shipping Act 1995 s 25(3).

11 Merchant Shipping Act 1995 s 25(3).

12 Ie subject to the Merchant Shipping Act 1995 s 25(5)-(8) (see the text and notes 14-23): s 25(4).

13 Merchant Shipping Act 1995 s 25(4). For the purposes of Pt III (see PARAS 423, 449, 451 et seq), references to going to sea include references to going to sea from any country outside the United Kingdom: s 84(2). As to offences relating to crew agreements see PARA 1124.

14 Merchant Shipping Act 1995 s 25(5). Any power conferred by Pt III (see PARAS 423, 449, 451 et seq) to provide for or grant an exemption includes power to provide for or grant the exemption subject to conditions: s 84(5). As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995 see PARA 41. At the date at which this volume states the law, no such regulations had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144 (as to which see PARA 452 et seq), have effect as if so made.

15 Merchant Shipping Act 1995 s 25(5)(a).

16 Merchant Shipping Act 1995 s 25(5)(b).

17 Merchant Shipping Act 1995 s 25(5).

18 Merchant Shipping Act 1995 s 25(6). As to the Secretary of State's power to give directions under the Merchant Shipping Act 1995 see PARA 41.

19 Merchant Shipping Act 1995 s 25(7). As to the Secretary of State's power to make regulations prescribing fees to be charged in respect of the issue or recording of any certificate, licence or other document see PARA 62.

20 As to the meaning of 'contravention' see PARA 50 note 3.

21 As to the meaning of 'master' see PARA 424.

22 See the Merchant Shipping Act 1995 s 25(8); and PARA 1124.

23 See the Merchant Shipping Act 1995 s 25(8); and PARA 1124. As to enforcing the detention of a ship under the Merchant Shipping Act 1995 see PARA 1253.

UPDATE

450 General provision for crew agreements

NOTE 4--In paragraph 3, the words 'The provisions of the Employment Rights Act 1996 which do not so apply' should read 'The provisions of the Employment Rights Act 1996 which so apply'. The Employment Rights Act 1996 Pt VIA (ss 63D-63K) (study and training) (see **EMPLOYMENT** vol 39 (2009) PARA 305A) is added to the list of provisions which so apply: Employment Rights Act 1996 s 199(8) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 1 para 7(c)) (Sch 1 is fully in force on 6 April 2011: SI 2010/303).

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451. Regulations relating to crew agreements.

The Secretary of State¹ may make regulations²:

- 79 (1) requiring such notice as may be specified in the regulations to be given to a superintendent³ or proper officer⁴, except in such circumstances as may be so specified, before a crew agreement⁵ is made or an agreement with any person is added to those contained in a crew agreement⁶;
- 80 (2) providing for the delivery to a superintendent or proper officer or the Registrar General of Shipping and Seamen⁷ of crew agreements and agreements added to those contained in a crew agreement and of copies of crew agreements and of agreements so added⁸;
- 81 (3) requiring the posting in ships⁹ of copies of or extracts from crew agreements¹⁰;
- 82 (4) requiring copies of or extracts from crew agreements to be supplied to members of the crew demanding them and requiring copies of or extracts from documents referred to in crew agreements to be made available, in such circumstances as may be specified in the regulations, for inspection by members of the crew¹¹; and
- 83 (5) requiring any documents carried in a ship pursuant to the general provision for crew agreements¹² to be produced on demand to an officer of revenue and customs¹³.

Regulations so made may make a contravention¹⁴ of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale or such less amount as may be specified in the regulations¹⁵.

1 As to the Secretary of State see PARA 38.

2 Merchant Shipping Act 1995 s 26(1). As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995 see PARA 41. At the date at which this volume states the law, no such regulations had been made under s 26 but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919 (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARAS 1025, 1026); the Merchant Shipping (Increased Penalties) Regulations 1979, SI 1979/1519 (an amending provision); and the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144 (as to which see PARA 452 et seq), have effect as if so made. As to the Secretary of State's power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc see PARA 41; and as to the Secretary of State's power to make regulations prescribing fees to be charged in respect of the issue or recording of any certificate, licence or other document see PARA 62.

As to the application of the Merchant Shipping Act 1995 s 26 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

3 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

4 As to the meaning of 'proper officer' see PARA 48 note 11.

5 As to the meaning of 'crew agreement' see PARA 450.

- 6 Merchant Shipping Act 1995 s 26(1)(a).
- 7 As to the Registrar General of Shipping and Seamen see PARA 61.
- 8 Merchant Shipping Act 1995 s 26(1)(b).
- 9 As to the meaning of 'ship' see PARA 229.
- 10 Merchant Shipping Act 1995 s 26(1)(c).
- 11 Merchant Shipping Act 1995 s 26(1)(d).
- 12 Ie in pursuance of the Merchant Shipping Act 1995 s 25 (see PARA 450): see s 26(1)(e).
- 13 Merchant Shipping Act 1995 s 26(1)(e) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.
- 14 As to the meaning of 'contravention' see PARA 50 note 3.
- 15 Merchant Shipping Act 1995 s 26(2). As to the meaning of 'standard scale' see PARA 1099; and as to offences relating to crew agreements see PARA 1124.

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452. Exemptions from general provision for crew agreements.

The requirements of the general statutory provisions relating to crew agreements¹ do not apply to the following descriptions of ships² and voyages³:

- 84 (1) a ship belonging to a general lighthouse authority⁴;
- 85 (2) a ship of less than 80 register tons⁵ engaged solely on coastal voyages⁶;
- 86 (3) a pleasure yacht which is engaged on a coastal voyage, or a pleasure yacht which is engaged on any other voyage provided that not more than four members of the crew receive wages for their employment⁷;
- 87 (4) a coastal voyage by any ship solely for the purpose of trials of the ship, its machinery or equipment⁸.

Nor do the general provisions relating to crew agreements⁹ apply to the following descriptions of seamen¹⁰:

- 88 (a) a person employed in a ship solely in connection with the construction, alteration, repair or testing of the ship, its machinery or equipment, and not engaged in the navigation of the ship¹¹;
- 89 (b) a person solely employed in work directly related to:
- 23 54. (i) the exploration of the sea bed or subsoil or the exploitation of their natural resources¹²;
- 55. (ii) the storage of gas in or under the sea bed or subsoil or the exploitation of their natural resources¹³;
- 56. (iii) the laying, inspection, testing, repair, alteration, renewal or removal of any submarine telegraph cable¹⁴;
- 57. (iv) pipeline works¹⁵ including the assembling, inspection, testing, maintaining, adjusting, repairing, altering, renewing, changing the position of, or dismantling a pipeline or length of pipeline¹⁶; or
- 58. (v) the provision of goods, personal services or entertainment on board¹⁷,
- 24 90 and who is not employed by the owner¹⁸ or the person employing the master of the ship and is not engaged in the navigation of the ship in the deck, engine room, radio, medical or catering department of that ship and who has been given a written statement by his employer specifying the nature of the employment, the remuneration, the intervals at which the remuneration is to be paid and the length of notice which he is required to give and entitled to receive to determine his employment and specifying any terms or conditions of his employment relating to sick pay, hours of work (including any terms and conditions relating to normal working hours), pensions and entitlement to holidays¹⁹;
- 91 (c) a member of the naval, military or air forces of the Crown or of any service administered by the Defence Council²⁰, when acting as such a member²¹.

1 le the Merchant Shipping Act 1995 s 25 (see PARA 450): see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(1); Interpretation Act 1978 s 17(2)(b). As to the meaning of 'crew agreement' under the Merchant Shipping Act 1995 see PARA 450.

2 For these purposes, 'ship' means a ship registered in the United Kingdom but does not include a fishing vessel: Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 2. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the registration of ships in the United Kingdom see PARA 245 et seq.

3 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(1); Interpretation Act 1978 s 17(2)(b).

4 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(1)(a). As to General Lighthouse Authorities see PARA 1068.

5 For these purposes, references to the gross or to the register tonnage of a ship are, in the case of a ship having alternative gross or alternative register tonnages, references to the larger of its gross tonnages or to the larger of its register tonnages, as the case may be: Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 2.

6 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(1)(b). For these purposes, 'coastal voyage' means a voyage between places in the British Islands, including the Republic of Ireland, or from and returning to such a place during which, in either case, no call is made at any place outside those islands: reg 2. As to the meaning of 'British Islands' see **STATUTES** vol 44(1) (Reissue) PARA 1383.

7 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(1)(c).

8 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(1)(d).

9 le the Merchant Shipping Act 1995 s 25 (see PARA 450): see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(2); Interpretation Act 1978 s 17(2)(b).

10 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(2); Interpretation Act 1978 s 17(2)(b).

11 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(2)(a).

12 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(2)(b)(i).

13 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(2)(b)(ii).

14 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(2)(b)(iii).

15 le as defined in the Offshore Safety Act 1992 s 1(4) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1677): see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(2)(b)(iv); Interpretation Act 1978 s 17(2)(b).

16 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(2)(b)(iv); Interpretation Act 1978 s 17(2)(b).

17 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(2)(b)(v).

18 In the Merchant Shipping Act 1995, and in any other enactment applicable to British ships or ships registered under that Act, any reference, however phrased, to the owner of a British ship, a United Kingdom ship or a ship registered in the United Kingdom, means, in relation to a bareboat charter ship, the person registered as the charterer: see the Merchant Shipping (Modification of Enactments) (Bareboat Charter Ships) Order 1994, SI 1994/774, art 2; and PARAS 230, 255, 357. For these purposes, 'bareboat charter ship' means a ship registered pursuant to the Merchant Shipping Act 1995 s 17(1)(a) (as to which see PARA 357): see the Merchant Shipping (Modification of Enactments) (Bareboat Charter Ships) Order 1994, SI 1994/774, art 1(2); Interpretation Act 1978 s 17(2)(b).

19 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(2)(b).

20 As to the Defence Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 443 et seq.

21 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(2)(c).

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453. Carrying of copy of crew agreement in ships.

A ship¹ required² to carry a crew agreement³ may, in the case of an agreement which relates to both that and to other ships and which is kept at an address ashore in the United Kingdom⁴, comply with that requirement by carrying a copy of the agreement certified in the following manner⁵, namely that such a copy so carried in a ship bears a certificate signed by the master certifying that it is a true copy of the crew agreement and specifying the address in the United Kingdom at which the crew agreement is kept and the name of the person by whom it is so kept⁶.

1 As to the meaning of 'ship' for these purposes see PARA 452 note 2.

2 Is required under the Merchant Shipping Act 1995 s 25 (see PARA 450): see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 5(1); Interpretation Act 1978 s 17(2)(b).

3 As to the meaning of 'crew agreement' under the Merchant Shipping Act 1995 s 25 see PARA 450.

4 As to the meaning of 'United Kingdom' see PARA 17 note 3.

5 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 5(1); Interpretation Act 1978 s 17(2)(b).

6 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 5(2).

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454. Delivery of crew agreement.

An employer must, within three days of the date when the last person remaining employed under the crew agreement¹ ceases to be employed under that agreement, or, if it is not practicable within that period, as soon as practicable thereafter, deliver the crew agreement to a superintendent or proper officer² for the place where the ship³ was when that person ceased to be so employed⁴. If the crew agreement covers an indefinite period, the employer must deliver the crew agreement within seven days of it being opened to a superintendent or proper officer for the place where the ship was when the agreement opened⁵.

A person who fails to comply with such an obligation imposed on him⁶ to deliver the crew agreement commits an offence⁷.

1 As to the meaning of 'crew agreement' under the Merchant Shipping Act 1995 s 25 see PARA 450.

2 For these purposes, 'appropriate superintendent or proper officer' means a superintendent or proper officer for the place at which a crew agreement, or an agreement with any person added to those contained in a crew agreement, is or is to be made: Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 3.

3 As to the meaning of 'ship' for these purposes see PARA 452 note 2.

4 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 6.

5 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 6.

6 Imposed on him by the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 6 (see the text and notes 1-5): see reg 10(1).

7 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 10(1); and PARA 1124.

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455. Display of crew agreement on ship.

The master of a ship¹ must cause:

- 92 (1) a copy of any crew agreement relating to the ship²; or
- 93 (2) an extract containing the terms of that agreement applicable to all seamen employed under it and to each description of seamen so employed³,

to be posted in some conspicuous place on board the ship where it can be read by the persons employed under the crew agreement⁴; and he must cause it to be kept so posted and legible so long as any seaman is employed in the ship under the crew agreement⁵.

A master who fails to comply with such an obligation imposed on him⁶ to display the crew agreement commits an offence⁷.

1 As to the meaning of 'ship' for these purposes see PARA 452 note 2.

2 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 7(a). As to the meaning of 'crew agreement' under the Merchant Shipping Act 1995 s 25 see PARA 450.

3 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 7(b).

4 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 7.

5 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 7.

6 Ie imposed on him by the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 7 (see the text and notes 1-5): see reg 10(2).

7 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 10(2); and PARA 1124.

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456. Supply and production of copy documents on demand by seamen.

Upon a seaman making a demand of his employer (or of the master), the employer (or the master, as the case may be) must, within a reasonable time¹:

- 94 (1) cause to be supplied to him a copy of the crew agreement under which he is employed² or such extracts therefrom as are necessary to show the terms on which he is employed³; and
- 95 (2) cause to be made available to him a copy of any document referred to in the agreement⁴.

A person or, as the case may be, a master who fails to comply with such an obligation imposed on him⁵ to supply and produce on demand copy documents related to the crew agreement commits an offence⁶.

1 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 8.

2 As to the meaning of 'crew agreement' under the Merchant Shipping Act 1995 s 25 see PARA 450.

3 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 8(a).

4 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 8(b).

5 He imposed on him by the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 8 (see the text and notes 1-4): see reg 10(1), (2).

6 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 10(1), (2); and PARA 1124.

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457. Production of documents on demand by officers.

The master must, on demand by an officer of revenue and customs¹, by any superintendent² or by the Registrar General of Shipping and Seamen³ produce to him⁴: (1) any crew agreement⁵, or the copy of any crew agreement⁶; and (2) any certificate evidencing an exemption granted by the Secretary of State⁷ from the statutory requirements⁸ with respect to the ship or to any person in it⁹.

A master who fails to comply with such an obligation imposed on him¹⁰ so to produce on demand any crew agreement (or an exemption) commits an offence¹¹.

1 As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

2 As to the meaning of 'appropriate superintendent or proper officer' see PARA 454 note 2.

3 As to the Registrar General of Shipping and Seamen see PARA 61.

4 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 9 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)).

5 As to the meaning of 'crew agreement' under the Merchant Shipping Act 1995 s 25 see PARA 450.

6 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 9(a). The text refers to the copy of any crew agreement that may be carried in the ship in pursuance of reg 5 (see PARA 453): see reg 9(a).

7 As to the Secretary of State see PARA 38.

8 Ie from the Merchant Shipping Act 1995 s 25 (see PARA 450): see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 9(b); Interpretation Act 1978 s 17(2)(b).

9 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 9(b); Interpretation Act 1978 s 17(2)(b).

10 Ie imposed on him by the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 9 (see the text and notes 1-9): see reg 10(2).

11 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 10(2); and PARA 1124.

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458. Regulations relating to crew agreements on United Kingdom fishing vessels.

The Secretary of State¹ may make regulations² prescribing the procedure to be followed in connection with the making of crew agreements between persons employed in United Kingdom fishing vessels³ and persons employing them and prescribing the places where such crew agreements are to be made or where an agreement with any person may be added to those contained in such a crew agreement⁴.

Such regulations may make a contravention⁵ of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale⁶ or such less amount as may be specified in the regulations⁷.

1 As to the Secretary of State see PARA 38.

2 As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.

3 As to the meaning of 'fishing vessel' see PARA 230 note 9; and as to the meaning of 'United Kingdom fishing vessel' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping Act 1995 s 109(1). At the date at which this volume states the law, no such regulations had been made under s 26 but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919 (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARAS 1025, 1026) have effect as if so made. As to the Secretary of State's power to grant exemptions see PARA 425.

The following provisions of the Employment Rights Act 1996 do not apply to employment as master, or as a member of the crew, of a fishing vessel where the employee is remunerated only by a share in the profits or gross earnings of the vessel, namely: ss 8-10 (right to itemised pay statement) (see **EMPLOYMENT** vol 39 (2009) PARA 99); Pt III (ss 28-35) (guarantee payments) (see **EMPLOYMENT** vol 39 (2009) PARA 237 et seq); s 44 (health and safety cases) (see **EMPLOYMENT** vol 39 (2009) PARA 544); s 45 (Sunday working for certain workers) (see **EMPLOYMENT** vol 39 (2009) PARA 545); s 47 (employee representatives) (see **EMPLOYMENT** vol 41 (2009) PARA 1176); s 47C (leave for family or domestic reasons) (see **EMPLOYMENT** vol 39 (2009) PARA 548); s 47E (flexible working) (see **EMPLOYMENT** vol 39 (2009) PARA 547); ss 50-57B (time off work for public duties, looking for work and making arrangements for training, ante-natal care and dependants) (see **EMPLOYMENT** vol 39 (2009) PARA 303 et seq); ss 61-63 (time off work for employee representatives) (see **EMPLOYMENT** vol 41 (2009) PARA 1177); Pt VII (ss 64-70) (suspension from work) (see **EMPLOYMENT** vol 39 (2009) PARA 316 et seq); Pt VIII (ss 71-80E) (maternity etc leave) (see **EMPLOYMENT** vol 39 (2009) PARA 323 et seq); Pt VIIIA (ss 80F-80I) (flexible leave) (see **EMPLOYMENT** vol 39 (2009) PARAS 83-86); s 92 (right to written statement of reasons for dismissal) (see **EMPLOYMENT** vol 40 (2009) PARA 712); s 93 (complaints to employment tribunal) (see **EMPLOYMENT** vol 40 (2009) PARA 713); Pt X (ss 94-134A) (unfair dismissal) (see **EMPLOYMENT** vol 40 (2009) PARA 714 et seq); Pt XI (ss 135-181) (redundancy payments etc) (see **EMPLOYMENT** vol 40 (2009) PARA 790 et seq); and Pt XII (ss 182-190) (insolvency of employers) (see **EMPLOYMENT** vol 39 (2009) PARAS 557-560): Employment Rights Act 1996 s 199(2) (amended by the Employment Relations Act 1999 ss 9, 44, Sch 4 Pt III paras 5, 34(a), (b), Sch 9; the Employment Act 2002 s 53, Sch 7 paras 24, 44(1), (2)(a), (b); and the Employment Relations Act 2004 s 41(8)). As to the meanings of 'employee' and 'employment' for these purposes see **EMPLOYMENT** vol 39 (2009) PARA 2. On the true construction of the Employment Rights Act 1996 s 199(2), the singular cannot be read as including the plural in the words 'the vessel'; and, therefore, the application of s 199(2) is restricted to those members of a crew who are remunerated only by a share in the profits or gross earnings of the vessel on which they were employed: *Goodeve v Gilsens (a firm)* [1985] ICR 401, CA.

5 As to the meaning of 'contravention' see PARA 50 note 3.

6 As to the meaning of 'standard scale' see PARA 1099.

7 Merchant Shipping Act 1995 s 109(2). As to offences under the Merchant Shipping Act 1995 see PARA 1099 et seq.

As to the powers of inspectors appointed under the Merchant Shipping Act 1995 s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 109 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 109 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

UPDATE

458 Regulations relating to crew agreements on United Kingdom fishing vessels

NOTE 4--Employment Rights Act 1996 s 47F (study and training) (see **EMPLOYMENT** vol 39 (2009) PARA 547), Pt VIA (ss 63D-63K) (study and training) (see **EMPLOYMENT** vol 39 (2009) PARA 305A) are also disapplied in relation to such employment: Employment Rights Act 1996 s 199(2) (further amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 1 para 7(a), (b)) (Sch 1 is fully in force on 6 April 2011: see SI 2010/303).

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B. SEAFARING DUTIES

459. Performance of seafaring duties by crew.

A seaman is not bound to perform any services other than those specified in his contract of service¹. However, he is required to perform duties which, although not specifically stipulated, are reasonably incidental to a seafaring life. Thus, the seaman must navigate the ship in all sorts of weather and perils unless the contract of service is duly dissolved²; he must conduct himself in a properly respectful manner towards his superiors³; and he must assist with the working of the cargo in ports of call⁴.

1 Thus a seaman who has agreed to serve on an ordinary voyage is not bound to continue to serve when the voyage has become extraordinary, eg:

816 (1) as when the risk ceases to be a commercial risk by reason of the carriage of contraband (*Burton v Pinkerton* (1867) LR 2 Exch 340; *O'Neil v Armstrong, Mitchell & Co* [1895] 2 QB 418, 8 Asp MLC 63, CA; *Lloyd v Sheen* (1905) 10 Asp MLC 75, DC; *Austin Friars Steam Shipping Co v Strack* [1905] 2 KB 315, 10 Asp MLC 70, DC (on appeal [1906] 2 KB 499, CA); *Palace Shipping Co Ltd v Caine* [1907] AC 386, 10 Asp MLC 529, HL; *Collins v Simpson Steamship Co* (1907) 24 TLR 178, CA); or

817 (2) where the voyage is to a war zone (*Robson v Sykes* [1938] 2 All ER 612, 61 Ll L Rep 16, DC); or

818 (3) where war breaks out and the ship is in danger of being captured or sunk (*Liston v The Carpathian (Owners)* [1915] 2 KB 42, 13 Asp MLC 70); or

819 (4) where the voyage is extended beyond the time and scope agreed upon (*The Eliza* (1823) 1 Hag Adm 182; *The Countess of Harcourt* (1824) 1 Hag Adm 248; *The Minerva* (1825) 1 Hag Adm 347; *The George Home* (1825) 1 Hag Adm 370; *The Westmorland* (1841) 1 Wm Rob 216; *Donkin v Hastie* (1897) 61 JP 568, DC); or

820 (5) where there is a shortage of provisions (*The Castilia* (1822) 1 Hag Adm 59).

As to when a voyage will be deemed to be terminated see *Haylett v Thompson* [1911] 1 KB 311, 11 Asp MLC 512, DC. The voyage to be considered is the 'voyage of the ship', not the voyage of the cargo: *The Scarsdale* [1906] P 103, 10 Asp MLC 235, CA (affd sub nom *Board of Trade v Baxter, The Scarsdale* [1907] AC 373, 10 Asp MLC 525, HL).

2 *The Neptune* (1824) 1 Hag Adm 227; *The Florence* (1852) 16 Jur 572; *The Sappho* (1871) LR 3 PC 690, 1 Asp MLC 65; *The Albion* [1941] P 99, 70 Ll L Rep 257 (affd (1942) P 81, 72 Ll L Rep 91, CA). Dissolution of the contract may be by:

821 (1) the act of the master if he discharges the seaman (see PARA 460 et seq); or

822 (2) the legitimate abandonment of the vessel at sea to save life, and with the authority of the master; or

823 (3) the hostile capture of the vessel (see PARA 1210 et seq).

3 *The Lowther Castle* (1825) 1 Hag Adm 384.

4 *The Cambridge* (1829) 2 Hag Adm 243.

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(ii) Discharge of Crews

460. Secretary of State's power to make regulations.

The Secretary of State¹ may make regulations² prescribing the procedure to be followed in connection with the discharge of seamen³ from United Kingdom ships⁴.

Such regulations may⁵ make provision⁶:

- 96 (1) requiring notice of such a discharge to be given at such time as may be specified in the regulations to the superintendent⁷ or proper officer⁸ at a place specified in or determined under the regulations⁹;
- 97 (2) requiring such a discharge to be recorded, whether by entries in the crew agreement¹⁰ and discharge book¹¹ or otherwise, and requiring copies of any such entry to be given to a superintendent or proper officer or the Registrar General of Shipping and Seamen¹².

Regulations so made may also:

- 98 (a) provide that in such cases as may be specified in the regulations, or except in such cases as may be specified in or determined under the regulations, a seaman is not to be discharged outside the United Kingdom from a United Kingdom ship without the consent of the proper officer¹³;
- 99 (b) make a contravention¹⁴ of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale¹⁵ or such less amount as may be specified in the regulations¹⁶.

Regulations so made may apply any provision relating to the power under which they are made¹⁷, with such modifications as appear to the Secretary of State to be appropriate, to cases where a seaman employed in a United Kingdom ship is left behind outside the United Kingdom otherwise than on being discharged from the ship¹⁸.

1 As to the Secretary of State see PARA 38.

2 As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41; and as to the Secretary of State's power to make regulations prescribing fees to be charged in respect of the issue or recording of any certificate, licence or other document see PARA 62.

3 As to the meaning of 'seaman' see PARA 424.

4 Merchant Shipping Act 1995 s 27(1). For the purposes of Pt III (ss 24-84) (see PARAS 423 et seq, 461 et seq), a seaman is discharged from a ship when his employment in that ship is terminated: s 84(3). As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the application of s 27 see PARA 423.

At the date at which this volume states the law, no such regulations had been made under s 27 but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of

Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919 (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARAS 1025, 1026); the Merchant Shipping (Increased Penalties) Regulations 1979, SI 1979/1519 (an amending provision); and the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144 (as to which see PARA 451 et seq), have effect as if so made.

5 Ie without prejudice to the generality of the Merchant Shipping Act 1995 s 27(1) (see the text and notes 1-4): see s 27(2).

6 Merchant Shipping Act 1995 s 27(2).

7 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

8 As to the meaning of 'proper officer' see PARA 48 note 11.

9 Merchant Shipping Act 1995 s 27(2)(a).

10 As to the meaning of 'crew agreement' see PARA 450.

11 As to discharge books see PARA 551 et seq.

12 Merchant Shipping Act 1995 s 27(2)(b). As to the Registrar General of Shipping and Seamen see PARA 61.

13 Merchant Shipping Act 1995 s 27(3). A shipowner who discharges a seaman without obtaining the requisite consent is liable for the seaman's wages until the end of the voyage: *Hassan v Trader Navigation Co Ltd* [1965] 2 Lloyd's Rep 378.

14 As to the meaning of 'contravention' see PARA 50 note 3.

15 As to the meaning of 'standard scale' see PARA 1099.

16 Merchant Shipping Act 1995 s 27(4). As to relevant offences see PARA 1125.

17 Ie any provision of the Merchant Shipping Act 1995 s 27 (see the text and notes 1-16): see s 28.

18 Merchant Shipping Act 1995 s 28. As to the application of s 28 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

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461. Notice of discharge.

The master of a ship¹ must, not less than 48 hours before a seaman is discharged from the ship² or, if it is not practicable within that period, as soon as practicable thereafter, give a notice of discharge in writing to a superintendent or proper officer for the place where the seaman is to be discharged³. A notice of discharge must contain the following particulars⁴:

- 100 (1) the name of the ship, its port of registry and official number⁵;
- 101 (2) the place, date and time of the seaman's discharge⁶;
- 102 (3) the capacity in which the seaman is employed in the ship⁷.

If a notice of discharge relates to more than one seaman, it must state, in addition to the particulars specified in heads (1) to (3) above, the number of seamen being discharged⁸.

A master who fails to comply with an obligation imposed on him⁹ to give such a notice of discharge in the circumstances described commits an offence¹⁰.

1 As to the meaning of 'ship' for these purposes see PARA 452 note 2.

2 Ie in the event of any dispute about a seaman's wages, and where that dispute is at the time of discharge to be submitted to a superintendent or proper officer under the Merchant Shipping Act 1995 s 33 (see PARA 470): see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 23(1); Interpretation Act 1978 s 17(2)(b). As to the meaning of 'superintendent' for these purposes see PARA 60 note 1; and as to the meaning of 'proper officer' for these purposes see PARA 48 note 11.

3 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 23(1); Interpretation Act 1978 s 17(2)(b). However, a notice of discharge is not required in respect of a seaman discharged if the seaman is to be discharged from a ship exempted from the requirements of the Merchant Shipping Act 1995 s 25 (see PARA 450) by the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 4(1) (see PARA 452) or if the seaman is exempted from those requirements by reg 4(2) (see PARA 452): reg 24; Interpretation Act 1978 s 17(2)(b).

4 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 23(2).

5 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 23(2)(a). As to a ship's name, its port of registry and official number etc see PARA 277 et seq.

6 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 23(2)(b).

7 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 23(2)(c).

8 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 23(3).

9 Ie under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 23(1) (see the text and notes 1-3): see reg 26(2); and PARA 1125.

10 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 26(2); and PARA 1125.

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462. Procedure on discharge.

Where a seaman is present at the time of his discharge¹:

- 103 (1) the master, or one of the ship's² officers authorised by him in that behalf must, before the seaman is discharged³:
- 25
- 59. (a) if the seaman produces his discharge book⁴ to him, record in it the name of the ship, its port of registry, gross or register tonnage and official number⁵, the description of the voyage, the capacity in which the seaman has been employed in the ship, the date on which he began to be so employed and the date and place of his discharge⁶; or
- 60. (b) if the seaman does not produce his discharge book to him, give to the seaman a certificate of discharge containing the like particulars⁷;
- 26
- 104 (2) the master must ensure that the seaman is discharged in the presence of the master himself, or the seaman's employer or a person authorised in that behalf by the master or employer⁸;
- 105 (3) the person mentioned in head (2) above in whose presence the seaman is being discharged must⁹:
- 27
- 61. (a) make and sign an entry in the official log book¹⁰ recording the place, date and time of the seaman's discharge¹¹; and
- 62. (b) make and sign an entry in the crew agreement¹² or, if there is a list of crew separate from a crew agreement, in the list of crew, recording the place and date of, and the reason for, the seaman's discharge¹³; and
- 28
- 106 (4) the seaman must sign the entry in the crew agreement and list of crew referred to in head (3)(b) above¹⁴.

Any person, including a master:

- 107 (i) who fails to comply with an obligation imposed on him by or under head (1) or head (3) above¹⁵; or
- 108 (ii) who fails to comply with an obligation imposed on him by head (3)(b) above in relation to an entry in a crew agreement or in a list of crew¹⁶,

commits an offence¹⁷; a master who fails to comply with an obligation imposed on him by head (2) above, or by head (3) above in circumstances where a seaman is not present at his own discharge¹⁸, commits an offence¹⁹; and a seaman who fails to comply with an obligation imposed on him by head (4) above commits an offence²⁰.

If a seaman so requests, within a period of six months from the date of his discharge from or his leaving the ship, the master, or one of the ship's officers authorised by him in that behalf, must give to the seaman a certificate (which must be separate from any other document) either as to the quality of his work or indicating whether he has fully discharged his obligations

under his contract of employment²¹. Any person, including a master, who fails to comply with this requirement commits an offence²².

1 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1).

2 As to the meaning of 'ship' see PARA 452 note 2.

3 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1)(a).

4 As to discharge books see PARA 551 et seq.

5 As to a ship's name, its port of registry and official number etc see PARA 277 et seq. As to the meaning of references to the gross or to the register tonnage see PARA 452 note 5.

6 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1)(a)(i).

7 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1)(a)(ii).

8 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1)(b).

9 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1)(c). Where a seaman is not present when he is discharged, the master, or a person authorised in that behalf by the master, must make the entries referred to in heads (3)(a) and (3)(b) in the text: reg 25(2).

10 As to the official log book see PARAS 531-533. All entries in the official log book required under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1), (2) must, in addition to being signed by the person making the entry, be signed also by a member of the crew: reg 25(3).

11 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1)(c)(i).

12 As to crew agreements see PARA 450 et seq.

13 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1)(c)(ii).

14 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1)(d).

15 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 26(1)(a); and PARA 1125.

16 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 26(1)(b); and PARA 1125.

17 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 26(1); and PARA 1125.

18 Ie an obligation imposed on him by the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(2) (see note 9): see reg 26(2); and PARA 1125.

19 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 26(2); and PARA 1125.

20 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 26(3); and PARA 1125.

21 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(4).

22 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 26(1)(a), (2); and PARA 1125.

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463. Discharge of seamen when ship ceases to be registered in the United Kingdom.

Where a United Kingdom ship¹ ceases to be registered², any seaman³ employed in the ship is discharged from the ship⁴ unless he consents in writing to continue his employment in the ship⁵; and the statutory provisions which relate to the payment and account of seamen's wages⁶ apply in relation to his wages as if the ship had remained a United Kingdom ship⁷.

1 As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 As to the meaning of 'registered' under the Merchant Shipping Act 1995 see PARA 254 note 2.

3 As to the meaning of 'seaman' see PARA 424.

4 As to when a seaman is regarded as discharged from a ship see PARA 460 note 4.

5 Merchant Shipping Act 1995 s 29. As to the application of s 29 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

6 Ie the Merchant Shipping Act 1995 ss 30-33 (see PARAS 467-470): see s 29. As to the meaning of 'wages' see PARA 464 note 6.

7 Merchant Shipping Act 1995 s 29. The provisions of the Merchant Shipping Act 1995 which relate to the relief and return of seamen etc left behind and shipwrecked (ie s 73) (see PARA 527) apply to a person left behind on being discharged in pursuance of s 29, whether or not at the time he is left behind the ship is still a United Kingdom ship: see s 73(7); and PARA 527.

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(4) WAGES ETC

(i) Entitlement to Wages etc

464. Right, or loss of right, to wages in certain circumstances.

Where a United Kingdom ship¹ is wrecked² or lost³, a seaman⁴ whose employment in the ship is thereby terminated before the date contemplated in the agreement under which he is so employed is⁵ entitled to wages⁶ at the rate payable under the agreement at the date of the wreck or loss for every day on which he is unemployed in the two months following that date⁷.

Where a United Kingdom ship is sold while outside the United Kingdom or ceases to be a United Kingdom ship and a seaman's employment in the ship is thereby terminated before the date contemplated in the agreement under which he is so employed, then, unless it is otherwise contemplated in the agreement, he is⁸ entitled to wages at the rate payable under the agreement at the date on which his employment is terminated for every day on which he is unemployed in the two months following that date⁹.

A seaman is not, however, so entitled to wages for a day on which he was unemployed, if it is shown¹⁰:

- 109 (1) that the unemployment was not due to the wreck or loss of the ship or, as the case may be, the termination of his employment on the sale of the ship or its ceasing to be a United Kingdom ship¹¹; or
- 110 (2) that the seaman was able to obtain suitable employment for that day but unreasonably refused or failed to take it¹².

Wages continue to accrue after the institution of proceedings for recovery¹³.

1 As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 A ship is a 'wreck' if she is so seriously damaged that she ceases to be a navigable ship: *The Olympic* [1913] P 92 at 101, 12 Asp MLC 318 at 321, CA, per Bagnall Deane J. A ship which collided with another on her first day out, and was so damaged that she was unable to continue her voyage, although she was able to regain her port of departure under her own steam, was, therefore, held to be a 'wreck': *The Olympic*. A ship is not necessarily deemed a 'wreck' because underwriters have abandoned her (*Lloyd v Sheen* (1905) 10 Asp MLC 75, DC (discovery of contraband cargo)); and in any case abandonment must be clearly proved (*The Warrior* (1862) Lush 476). The scuttling of a ship in port to put out a fire has been held to constitute 'wreck or loss': *The Woodhorn* (1891) 92 LT Jo 113. A seaman incapacitated by accident in the course of duty was formerly by maritime custom entitled to his wages for the whole voyage: *Chandler v Grieves* (1792) 2 Hy Bl 606n.

3 Destruction of a neutral ship, not shown to have been carrying contraband of war, by a belligerent state constitutes 'loss' (*Sievwright v Allen* [1906] 2 KB 81, 10 Asp MLC 251); but, where, unknown to the crew, the vessel is carrying contraband of war, the crew's right to wages does not cease with the capture of the ship (*Austin Friars Steam Shipping Co v Strack* [1905] 2 KB 315, 10 Asp MLC 70, DC; on appeal [1906] 2 KB 499, CA). See also *Horlock v Beal* [1916] 1 AC 486, 13 Asp MLC 250, HL (where a British ship was detained in an enemy port at the outbreak of war, and the crew interned; it was held that the detention of the ship did not constitute 'loss of the ship' within what is now the Merchant Shipping Act 1995 s 38, but that the further performance of the crew's contract of service had become impossible from the date of the detention of the ship, and that a seaman ceased to be entitled to his wages as soon as the further performance of the contract became

impossible). The provision that is now embodied in the Merchant Shipping Act 1995 s 38 is not exhaustive: *Horlock v Beal*. Loss may also be caused by explosion: see *Collins v Simpson Steamship Co* (1907) 24 TLR 178, CA. The wreck or loss may be deemed to occur not when the vessel goes ashore but when the venture terminates: *The Terneuzen* [1938] P 109, [1938] 2 All ER 348, 60 Ll L Rep 368. As to wreck see the cases cited in note 2; and *Barras v Aberdeen Steam Trawling and Fishing Co Ltd* [1933] AC 402, 18 Asp MLC 384, HL (applying the meaning of 'wreck' in what is now the Merchant Shipping Act 1995 s 38).

4 The Merchant Shipping Act 1995 s 38 applies to a master as it does to a seaman: s 38(4). As to the meanings of 'master' and 'seaman' see PARA 424.

5 le subject to the Merchant Shipping Act 1995 s 38(2)-(4) (see the text and notes 4, 8-12): see s 38(1).

6 For these purposes, 'wages' includes emoluments: Merchant Shipping Act 1995 s 313(1).

7 Merchant Shipping Act 1995 s 38(1). As to the application of s 38 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425. The Employment Rights Act 1996 Pt II (ss 13-27) (deductions from wages) (see **EMPLOYMENT** vol 39 (2009) PARA 230 et seq) does not apply to a person employed as a seaman in a ship registered in the United Kingdom under a crew agreement the provisions and form of which are of a kind approved by the Secretary of State (see s 199(1); and PARA 450 note 4); nor do ss 8-10 (right to itemised pay statement) (see **EMPLOYMENT** vol 39 (2009) PARA 99) apply to employment as a merchant seaman (see s 199(4); PARA 450 note 4).

See also *Ellerman Lines Ltd v Murray* [1931] AC 126, 18 Asp MLC 184, HL (where a seaman's right to wages during the period of two months was held to be irrespective of the date on which, had the ship not been wrecked or lost, his service would, under his agreement, have terminated).

8 le subject to the Merchant Shipping Act 1995 s 38(3)-(4) (see the text and notes 4, 10-12): see s 38(2).

9 Merchant Shipping Act 1995 s 38(2).

10 Merchant Shipping Act 1995 s 38(3).

11 Merchant Shipping Act 1995 s 38(3)(a).

12 Merchant Shipping Act 1995 s 38(3)(b).

13 *Vogiatzis v SS Fairport, The Fairport* [1967] P 167, [1966] 2 All ER 1026, [1966] 2 Lloyd's Rep 7 (overruling *The Carolina* (1875) 34 LT 399, 3 Asp MLC 141).

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465. Extra wages.

As a general rule, seamen are not entitled to claim any additional wages in respect of services rendered in the course of the period of engagement, even though the master has agreed to pay them, the contract being considered void for absence of consideration as well as from public policy¹. The fact that a vessel is about to sail short-handed is, however, a fact which will justify an agreement to pay additional remuneration²; and a seaman who is promoted during a voyage is entitled to be paid at an enhanced rate of payment³, even though no alteration as to rate of pay is made in the ship's articles⁴. The owners may be bound by an agreement in reasonable terms made by the master to pay extra remuneration to the crew to bring a vessel home from a foreign port after war has broken out and the members of the crew have refused to sail, unless they are paid such extra remuneration in view of the war risks not contemplated by the members of the crew in their original agreement of wages for the voyage⁵.

The crew may be bound by an agreement in reasonable terms to accept half wages in the event of certain contingencies⁶.

1 *Harris v Watson* (1971) Peake 72; *Stilk v Myrick* (1809) 2 Camp 317; *Harris v Carter* (1854) 3 E & B 559; *Frazer v Hatton* (1857) 2 CBNS 512; *Hopkins v M'Bride* (1901) 50 WR 255; *Harrison v Dodd* (1914) 111 LT 47, 12 Asp MLC 503, DC. It is otherwise where a good consideration can be shown: *Clutterbuck v Coffin* (1842) 3 Man & G 842. In *Harrison v Dodd*, a chief engineer was held to have no authority to agree to pay overtime to a fireman. See further PARA 459 note 1.

2 *Hartley v Ponsonby* (1857) 7 E & B 872; *Turner v Owen* (1862) 3 F & F 176; *Moore v City of Malines (Owners) and Purvis Shipping Co Ltd* (1948) 81 Ll L Rep 96.

3 *Hanson v Royden* (1867) LR 3 CP 47.

4 *The Providence* (1825) 1 Hag Adm 391; *Hicks v Walker* (1856) 4 WR 511.

5 *Liston v The Carpathian (Owners)* [1915] 2 KB 42, 13 Asp MLC 70; cf *Pugh v Henville* [1957] 2 Lloyd's Rep 261 (where the members of the crew of a ship expecting a voyage to America were held to be rightly convicted for refusing to prepare the vessel for sea after the ship had been requisitioned and ordered to Cyprus, an area held not to be one of exceptional risk although the seamen honestly believed the Mediterranean to be dangerous because it was or might have become a war zone).

6 *The Hoghton* (1833) 3 Hag Adm 100.

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466. Compensation on wrongful dismissal.

In the absence of express agreement, the master of a vessel is entitled to reasonable notice of dismissal¹ and he may sue for damages for wrongful dismissal².

1 *Green v Wright* (1876) 1 CPD 591, 3 Asp MLC 254, DC. The terms of the master's employment on one voyage continue to a succeeding voyage unless otherwise agreed: *The Gananoque* (1862) Lush 448. As to the measure of damages where a master was wrongfully dismissed abroad see *The Camilla* (1858) Sw 312.

2 *The Camilla* (1858) Sw 312; *Green v Wright* (1876) 1 CPD 591, 3 Asp MLC 254, DC. An action for the recovery of wages by the master of the ship lies in rem and in personam: see PARA 477. As to the right of masters to interest if there is unreasonable delay in paying wages see the Merchant Shipping Act 1995 s 35; and PARA 472. The master may also have a right to wages during unemployment due to the wreck or loss of his ship by virtue of s 38: see PARA 464.

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(ii) Payment and Account of Wages

467. Payment of seamen's wages on discharge.

Where a seaman¹ employed under a crew agreement² relating to a United Kingdom ship³ leaves the ship on being discharged from it, then⁴ the wages⁵ due to the seaman under the agreement must either⁶:

- 111 (1) be paid to him in full at the time when he so leaves the ship (the 'time of discharge')⁷; or
- 112 (2) be paid to him within a pay cycle, in accordance with the provisions governing payment up-to-date at specified intervals⁸.

If the amount shown in the account duly delivered to a seaman⁹ as being the amount shown payable to him under head (1) above is replaced by an increased amount shown in a further account duly delivered to him¹⁰, the balance must be paid to him within seven days of the time of discharge; and, if the amount so shown in the account so delivered to him exceeds £50 and it is not practicable to pay the whole of it at the time of discharge, not less than £50 nor less than one-quarter of the amount so shown must be paid to him at that time and the balance within seven days of that time¹¹.

If any amount which (except under head (2) above)¹² is payable to a seaman is not paid at the time at which it is so payable, the seaman is entitled to wages at the rate last payable under the crew agreement for every day on which it remains unpaid during the period of 56 days following the time of discharge; and, if any such amount or any amount so payable remains unpaid after the end of that period, it carries interest at the rate of 20 per cent per annum¹³.

Where the crew agreement¹⁴ provides for the seaman's basic wages to be payable up-to-date at specified intervals not exceeding one month, and for any additional amounts of wages to be payable within the pay cycle following that to which they relate, any amount of wages due to the seaman under the agreement must be paid to him not later than the date on which the next payment of his basic wages following the time of discharge would have fallen due if his employment under the agreement had continued¹⁵. If, however, it is not practicable, in the case of any amount due to the seaman by way of wages additional to his basic wages, to pay that amount by the required date¹⁶, that amount must be paid to him not later than what would have been the last day of the pay cycle immediately following that date if his employment under the crew agreement had continued¹⁷. If any amount which is so payable¹⁸ to a seaman is not paid at the time at which it is so payable, it carries interest at the rate of 20% per annum¹⁹.

However, these provisions which govern the late payment of wages²⁰ do not apply if the failure to pay was due to²¹: (a) a mistake²²; (b) a reasonable dispute as to liability²³; (c) the act or default of the seaman²⁴; or (d) any other cause, not being the wrongful act or default of the persons liable to pay his wages or of their servants or agents²⁵; and so much of those provisions as relates to interest on the amount due does not apply if a court in proceedings for its recovery so directs²⁶.

Where a seaman is employed under a crew agreement relating to more than one ship, the provisions governing payment of his wages on discharge²⁷ have effect, in relation to wages due

to him under the agreement, as if for any reference to the time of discharge there were substituted a reference to the termination of his employment under the crew agreement²⁸.

Where a seaman²⁹ is discharged from a ship outside the United Kingdom but returns to the United Kingdom under arrangements made by the persons who employed him, the provisions governing payment of his wages on discharge³⁰ have effect, in relation to the wages due to him under a crew agreement relating to the ship, as if for the references³¹ to the time of discharge there were substituted references to the time of his return to the United Kingdom³².

For these purposes, any amount of wages, if not paid to him in cash, is taken to have been paid to a seaman³³: (i) on the date when a cheque, or a money or postal order issued by the Post Office company³⁴, for that amount was dispatched by the recorded delivery service to the seaman's last known address³⁵; or (ii) on the date when any account kept by the seaman with a bank or other institution was credited with that amount³⁶.

1 As to the meaning of 'seaman' see PARA 424.

2 As to the meaning of 'crew agreement' see PARA 450.

3 As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Ie except as provided by or under the Merchant Shipping Act 1995 Pt III (ss 24-84) (see PARAS 423 et seq, 468 et seq) or any other enactment: see s 30(1). As to the payment of wages due to a seaman see in particular ss 30-41; and see PARA 468 et seq.

5 As to the meaning of 'wages' see PARA 464 note 6.

6 Merchant Shipping Act 1995 s 30(1). As to the application of s 30 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

7 Merchant Shipping Act 1995 s 30(1)(a).

8 Merchant Shipping Act 1995 s 30(1)(b). The text refers to payment in accordance with s 30(4), (5) (see the text and notes 14-17): see s 30(1)(b).

9 Ie under the Merchant Shipping Act 1995 s 31(1) (see PARA 468): see s 30(2).

10 Ie under the Merchant Shipping Act 1995 s 31(3) (see PARA 468): see s 30(2).

11 Merchant Shipping Act 1995 s 30(2).

12 Ie any amount under the Merchant Shipping Act 1995 s 30(1)(a) (see head (1) in the text) or s 30(2) (see the text and notes 9-11) only: see s 30(3).

13 Merchant Shipping Act 1995 s 30(3).

14 Ie the crew agreement referred to in the Merchant Shipping Act 1995 s 30(1) (see the text and notes 1-8): see s 30(4).

15 Merchant Shipping Act 1995 s 30(4).

16 Ie the date mentioned in the Merchant Shipping Act 1995 s 30(4) (see the text and notes 14-15): see s 30(5).

17 Merchant Shipping Act 1995 s 30(5).

18 Ie under the Merchant Shipping Act 1995 s 30(4), (5) (see the text and notes 14-17): see s 30(6).

19 Merchant Shipping Act 1995 s 30(6).

20 Ie the Merchant Shipping Act 1995 s 30(3) (see the text and notes 12-13) or s 30(6) (see the text and notes 18-19): see s 30(7).

21 Merchant Shipping Act 1995 s 30(7).

- 22 Merchant Shipping Act 1995 s 30(7)(a).
- 23 Merchant Shipping Act 1995 s 30(7)(b).
- 24 Merchant Shipping Act 1995 s 30(7)(c).
- 25 Merchant Shipping Act 1995 s 30(7)(d).
- 26 Merchant Shipping Act 1995 s 30(7).
- 27 Ie the Merchant Shipping Act 1995 s 30(1)-(7) (see the text and notes 1-26): see s 30(8).
- 28 Merchant Shipping Act 1995 s 30(8).
- 29 Ie in pursuance of the Merchant Shipping Act 1995 s 29 (see PARA 463): see s 30(9).
- 30 Ie the Merchant Shipping Act 1995 s 30(1)-(7) (see the text and notes 1-26), s 30(8) being omitted: see s 30(9).
- 31 Ie in the Merchant Shipping Act 1995 s 30(1)-(4) (see the text and notes 1-15): see s 30(9).
- 32 Merchant Shipping Act 1995 s 30(9).
- 33 Merchant Shipping Act 1995 s 30(10).
- 34 Ie within the meaning of the Postal Services Act 2000 Pt IV (ss 62-82) (see s 62; and **POST OFFICE** vol 36(2) (Reissue) PARA 3): see the Merchant Shipping Act 1995 s 30(10)(a) (amended by SI 2001/1149).
- 35 Merchant Shipping Act 1995 s 30(10)(a) (as amended: see note 34).
- 36 Merchant Shipping Act 1995 s 30(10)(b).

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468. Account of seamen's wages.

The master¹ of every United Kingdom ship² must³ deliver to every seaman⁴ employed in the ship under a crew agreement⁵ an account of the wages⁶ due to him under that crew agreement and of the deductions subject to which the wages are payable⁷. The account must indicate that the amounts stated therein are subject to any later adjustment that may be found necessary and must be delivered not later than 24 hours before the time of discharge⁸ or, if the seaman is discharged without notice or at less than 24 hours' notice, at the time of discharge⁹. If the amounts stated in the account require adjustment, the persons who employed the seaman must deliver to him a further account stating the adjusted amounts; and that account must be delivered not later than the time at which the balance of his wages is payable to the seaman¹⁰.

Where certain of the provisions governing the late payment of wages customarily paid up-to-date at specified intervals¹¹ apply to the payment of any amount of wages due to a seaman under a crew agreement¹²:

- 113 (1) the person who employed the seaman must deliver to him an account of the wages payable to him under those provisions¹³ and of the deductions subject to which the wages are payable¹⁴; and
- 114 (2) any such account must be so delivered at the time when the wages are paid to him¹⁵; and
- 115 (3) the usual provisions as to delivery of an account¹⁶ do not apply¹⁷.

Where a seaman is employed under a crew agreement relating to more than one ship, any account which otherwise¹⁸ would be required to be delivered to him by the master must instead be delivered to him by the persons employing him and must be so delivered on or before the termination of his employment under the crew agreement¹⁹.

If a person fails without reasonable excuse to comply with the provisions which govern the accounting of seamen's wages²⁰, he commits an offence²¹.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Is subject to the Merchant Shipping Act 1995 s 31(4), (5) (see the text and notes 11-19) and to regulations made under s 32 (regulations relating to wages and accounts) (see PARA 469) or s 73 (relief and return of seaman etc left behind and shipwrecked) (see PARA 527): see s 31(1).

4 As to the meaning of 'seaman' see PARA 424.

5 As to the meaning of 'crew agreement' see PARA 450.

6 As to the meaning of 'wages' see PARA 464 note 6.

7 Merchant Shipping Act 1995 s 31(1). As to the application of s 31 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

8 As to the meaning of 'time of discharge' see PARA 467.

- 9 Merchant Shipping Act 1995 s 31(2).
- 10 Merchant Shipping Act 1995 s 31(3).
- 11 Ie the Merchant Shipping Act 1995 s 30(4) or (5) (see PARA 467): see s 31(4).
- 12 Merchant Shipping Act 1995 s 31(4). The provisions which, for the purposes of s 30 (see PARA 467), govern when any amount of wages, if not paid to him in cash, is taken to have been paid to a seaman (see s 30(10); and PARA 467) apply for the purposes of s 31(4) as they apply for the purposes of s 30: see s 31(4).
- 13 Ie payable under the Merchant Shipping Act 1995 s 30(4) or (5) (see PARA 467), as the case may be: see s 31(4).
- 14 Merchant Shipping Act 1995 s 31(4)(a).
- 15 Merchant Shipping Act 1995 s 31(4)(b).
- 16 Ie the Merchant Shipping Act 1995 s 31(1)-(3) (see the text and notes 1-10): see s 31(4)(c).
- 17 Merchant Shipping Act 1995 s 31(4)(c).
- 18 Ie under the Merchant Shipping Act 1995 s 31(1)-(4) (see the text and notes 1-17): see s 31(5).
- 19 Merchant Shipping Act 1995 s 31(5).
- 20 Ie the Merchant Shipping Act 1995 s 31(1)-(5) (see the text and notes 1-19): see s 31(6).
- 21 See the Merchant Shipping Act 1995 s 31(6); and PARA 1126.

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469. Regulations relating to wages and accounts.

The Secretary of State¹ may make regulations²:

- 116 (1) authorising deductions to be made from the wages³ due to a seaman⁴ under a crew agreement⁵, in cases where a breach of his obligations under the agreement is alleged against him and such conditions, if any, as may be specified in the regulations are complied with, or in such other cases as may be specified in the regulations⁶;
- 117 (2) regulating the manner in which any amounts deducted under the regulations are to be dealt with⁷;
- 118 (3) prescribing the manner in which wages due to a seaman under a crew agreement are to be or may be paid⁸;
- 119 (4) regulating the manner in which such wages are to be dealt with and accounted for in circumstances where a seaman leaves his ship⁹ in the United Kingdom¹⁰ otherwise than on being discharged¹¹ therefrom¹²;
- 120 (5) prescribing the form and manner in which any account required to be delivered¹³ is to be prepared and the particulars to be contained therein, which may be estimated amounts¹⁴.

1 As to the Secretary of State see PARA 38.

2 Merchant Shipping Act 1995 s 32. As to the application of s 32 see PARA 423. At the date at which this volume states the law, no such regulations had been made under s 32 but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Seamen's Wages and Accounts) Regulations 1972, SI 1972/1700 (amended by SI 1978/1757; SI 1985/340; SI 1994/791; SI 1999/3360), the Merchant Shipping (Seamen's Wages and Accounts) (Fishing Vessels) Regulations 1972, SI 1972/1701 (amended by SI 1988/2064; SI 1999/3360) (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1027) and (to some extent) the Merchant Shipping (Repatriation) Regulations 1979, SI 1979/97 (see note 12) have effect as if so made.

As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41. As from a day to be appointed, the power to make regulations under s 32 includes power to provide for the determination of certain deductions from wages in respect of employment in fishing vessels by a body established or approved under s 32: see s 111 (not yet in force); and PARA 480.

3 As to the meaning of 'wages' see PARA 464 note 6.

4 As to the meaning of 'seaman' see PARA 424.

5 In addition to any authorised by any provision of the Merchant Shipping Act 1995 Pt III (ss 24-84) (see PARAS 423 et seq, 470 et seq) or any other enactment for the time being in force: see s 32(a). As to the meaning of 'crew agreement' see PARA 450.

6 Merchant Shipping Act 1995 s 32(a). See the Merchant Shipping (Seamen's Wages and Accounts) Regulations 1972, SI 1972/1700, regs 4-6 (amended by SI 1978/1757; SI 1994/791).

7 Merchant Shipping Act 1995 s 32(b). See the Merchant Shipping (Seamen's Wages and Accounts) Regulations 1972, SI 1972/1700, regs 7-8 (amended by SI 1978/1757; SI 1985/340).

8 Merchant Shipping Act 1995 s 32(c). See the Merchant Shipping (Seamen's Wages and Accounts) Regulations 1972, SI 1972/1700, reg 2.

- 9 As to the meaning of 'ship' see PARA 229.
- 10 As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 11 As to when a seaman is regarded as discharged from a ship see PARA 460 note 4.
- 12 Merchant Shipping Act 1995 s 32(d). See the Merchant Shipping (Repatriation) Regulations 1979, SI 1979/97, regs 11-14 (regs 11, 12 amended by SI 1979/1519).
- 13 le by the Merchant Shipping Act 1995 s 31 (see PARA 468): see s 32(e).
- 14 Merchant Shipping Act 1995 s 32(e). See the Merchant Shipping (Seamen's Wages and Accounts) Regulations 1972, SI 1972/1700, reg 3, Schedule.

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470. Power of superintendent or proper officer to decide disputes about wages.

Any dispute relating to the amount payable to a seaman¹ employed under a crew agreement² may be submitted by the parties to a superintendent³ or proper officer⁴ for decision⁵. However, the superintendent or proper officer is not bound to accept the submission or, if he has accepted it, to decide the dispute, if he is of the opinion that the dispute, whether by reason of the amount involved or for any other reason, ought not to be decided by him⁶.

The decision of a superintendent or proper officer on a dispute so submitted to him is final⁷.

1 As to the meaning of 'seaman' see PARA 424.

2 As to the meaning of 'crew agreement' see PARA 450.

3 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

4 As to the meaning of 'proper officer' see PARA 48 note 11.

5 Merchant Shipping Act 1995 s 33(1). As to the application of s 33 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

Documents purporting to be submissions to or decisions by superintendents or proper officers under s 33 are admissible in evidence and, when in the custody of the Registrar General of Shipping and Seamen, are open to public inspection: see s 287(1)(a) (prospectively repealed by s 314(3), Sch 14 para 6, as from a day to be appointed); and PARA 1109. As to the Registrar General of Shipping and Seamen see PARA 61.

6 Merchant Shipping Act 1995 s 33(1). See note 5.

7 Merchant Shipping Act 1995 s 33(2). See note 5.

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471. Restriction on assignment of and charge upon wages.

As respects the wages¹ due or accruing to a seaman² employed in a United Kingdom ship³:

- 121 (1) the wages are not subject to attachment⁴;
- 122 (2) an assignment thereof before they have accrued does not bind the seaman and the payment of the wages to the seaman is valid notwithstanding any previous assignment or charge⁵; and
- 123 (3) a power of attorney or authority for the receipt of the wages is not irrevocable⁶.

However, these restrictions do not affect the provisions with respect to allotment notes⁷; nor do they apply to any disposition relating to the application of wages⁸:

- 124 (a) in the payment of contributions to a fund declared by regulations made by the Secretary of State⁹ to be a fund to which these provisions apply¹⁰; or
- 125 (b) in the payment of contributions in respect of the membership of a body declared by regulations made by the Secretary of State to be a body to which these provisions apply¹¹;

or to anything done or to be done for giving effect to such a disposition¹².

1 As to the meaning of 'wages' see PARA 464 note 6.

2 As to the meaning of 'seaman' see PARA 424.

3 Merchant Shipping Act 1995 s 34(1). As to the application of s 34 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425. As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping Act 1995 s 34(1)(a). Head (1) in the text is subject, in relation to England and Wales, to the Attachment of Earnings Act 1971 (see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 73 (2009) PARA 627) (Merchant Shipping Act 1995 s 34(4)) and is subject also to any provision made by or under the Child Support Act 1991 s 31 or s 33 (deductions from earnings orders) (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 559) (Merchant Shipping Act 1995 s 34(5)). As to the meanings of 'England' and 'Wales' see PARA 17 note 2. As to Scotland see s 34(1)(b).

5 Merchant Shipping Act 1995 s 34(1)(c).

6 Merchant Shipping Act 1995 s 34(1)(d).

7 Merchant Shipping Act 1995 s 34(2). The text refers to the provisions of Pt III (ss 24-84) (see PARAS 423 et seq, 472 et seq) with respect to allotment notes (as to which see PARA 473): see s 34(2).

8 Merchant Shipping Act 1995 s 34(3).

9 As to the Secretary of State see PARA 38; and as to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.

10 Merchant Shipping Act 1995 s 34(3)(a). At the date at which this volume states the law, no such regulations had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Seamen's Wages) (Contributions) Regulations 1972, SI 1972/1699, have effect as if so made; and these regulations declare that the Merchant Shipping Act 1995 s 34 applies, in relation to contributions to a fund, to any pension fund and any charity: see the Merchant Shipping (Seamen's Wages) (Contributions) Regulations 1972, SI 1972/1699, regs 1, 2; Interpretation Act 1978 s 17(2)(b).

11 Merchant Shipping Act 1995 s 34(3)(b). Accordingly, s 34 applies, in relation to contributions in respect of membership of a body, to any trade union and any friendly society: see the Merchant Shipping (Seamen's Wages) (Contributions) Regulations 1972, SI 1972/1699, regs 1, 2; Interpretation Act 1978 s 17(2)(b). See also note 10.

12 Merchant Shipping Act 1995 s 34(3).

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472. Power of the court to award interest on wages due otherwise than under crew agreement.

In any proceedings by the master¹ of a ship² or a person employed in a ship otherwise than under a crew agreement³ for the recovery of any sum due to him as wages⁴, the court, unless it appears to the court that the delay in paying the sum was due to⁵:

- 126 (1) a mistake⁶;
- 127 (2) a reasonable dispute as to liability⁷;
- 128 (3) the act or default of the person claiming the amount⁸; or
- 129 (4) any other cause, not being the wrongful act or default of the persons liable to make the payment or their servants or agents⁹,

may order them to pay, in addition to the sum due, interest on it at the rate of 20% per annum or such lower rate as the court may specify, for the period beginning seven days after the sum became due and ending when the sum is paid¹⁰.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'ship' see PARA 229.

3 As to the meaning of 'crew agreement' see PARA 450.

4 As to the meaning of 'wages' see PARA 464 note 6.

5 Merchant Shipping Act 1995 s 35. As to the application of s 35 see PARA 423; as to the power to grant exemptions with respect to fishing vessels see PARA 425; and as to the time limit for summary orders see PARA 1101.

6 Merchant Shipping Act 1995 s 35(a).

7 Merchant Shipping Act 1995 s 35(b).

8 Merchant Shipping Act 1995 s 35(c).

9 Merchant Shipping Act 1995 s 35(d).

10 Merchant Shipping Act 1995 s 35.

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(iii) Allotment of Wages

473. Allotment notes.

A seaman¹ may², by means of an allotment note issued in accordance with regulations made by the Secretary of State³, allot to any person or persons part of the wages⁴ to which he is to become entitled in the course of his employment in a United Kingdom ship⁵ or ships⁶. A seaman's right so to make an allotment is subject to such limitations as may⁷ be imposed by regulations made by the Secretary of State⁸.

Regulations made by the Secretary of State for these purposes may prescribe the form of allotment notes⁹; and:

- 130 (1) may limit the circumstances in which allotments may be made¹⁰;
- 131 (2) may limit, whether by reference to an amount or by reference to a proportion, the part of the wages that may be allotted and the number of persons to whom it may be allotted and may prescribe the method by which that part is to be calculated¹¹;
- 132 (3) may limit the persons to whom allotments may be made by a seaman to persons of such descriptions or persons standing to him in such relationships as may be prescribed by the regulations¹²;
- 133 (4) may prescribe the times and the intervals at which payments under allotment notes are to be made¹³.

Regulations so made may make different provision in relation to different descriptions of seamen and different circumstances¹⁴.

1 As to the meaning of 'seaman' see PARA 424.

2 Ie subject to the Merchant Shipping Act 1995 s 36(2)-(4) (see the text and notes 7-14): see s 36(1).

3 As to the Secretary of State see PARA 38; and as to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.

4 As to the meaning of 'wages' see PARA 464 note 6.

5 As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 Merchant Shipping Act 1995 s 36(1). As to the application of s 36 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

7 Ie by virtue of the Merchant Shipping Act 1995 s 36(3), (4) (see the text and notes 9-14): see s 36(2).

8 Merchant Shipping Act 1995 s 36(2).

9 Merchant Shipping Act 1995 s 36(3). At the date at which this volume states the law, no such regulations had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Seamen's Allotments) Regulations 1972, SI 1972/1698, have effect as if so made. Accordingly, as to the form prescribed for allotment notes see reg 5, Schedule.

10 Merchant Shipping Act 1995 s 36(3)(a). See the Merchant Shipping (Seamen's Allotments) Regulations 1972, SI 1972/1698, reg 2.

11 Merchant Shipping Act 1995 s 36(3)(b). See the Merchant Shipping (Seamen's Allotments) Regulations 1972, SI 1972/1698, reg 3(1)(a), (2).

12 Merchant Shipping Act 1995 s 36(3)(c). See the Merchant Shipping (Seamen's Allotments) Regulations 1972, SI 1972/1698, reg 3(1)(b).

13 Merchant Shipping Act 1995 s 36(3)(d). See the Merchant Shipping (Seamen's Allotments) Regulations 1972, SI 1972/1698, reg 4.

14 Merchant Shipping Act 1995 s 36(4).

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474. Right of person named in allotment to sue in own name.

A person to whom any part of a seaman's wages¹ has been allotted by an allotment note issued in accordance with the regulations² has the right to recover that part in his own name, and for that purpose has the same remedies as the seaman has for the recovery of his wages³.

In any proceedings brought by a person named in such an allotment note as the person to whom any part of a seaman's wages has been allotted it is presumed, unless the contrary is shown, that the seaman is entitled to the wages specified in the note and that the allotment has not been varied or cancelled⁴.

1 As to the meaning of 'seaman' see PARA 424; and as to the meaning of 'wages' see PARA 464 note 6.

2 I.e regulations made under the Merchant Shipping Act 1995 s 36 (see PARA 473): see s 37(1). As to the Secretary of State see PARA 38; and as to his power to make subordinate legislation under the Merchant Shipping Act 1995 generally see PARA 41.

3 Merchant Shipping Act 1995 s 37(1). As to the application of s 37 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

4 Merchant Shipping Act 1995 s 37(2).

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(iv) Proceedings for Recovery of Wages

475. Admiralty jurisdiction.

A seaman has a maritime lien for wages¹ and cannot by any agreement forfeit it or be deprived of any remedy for the recovery of his wages to which, in the absence of the agreement, he would be entitled².

Seamen may sue in the Admiralty court either in rem or in personam and either separately or jointly on one claim under the Admiralty jurisdiction³.

In the case of any such claim where the claim arises in connection with a ship and the person who would be liable on the claim in an action in personam (the 'relevant person') was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship⁴, an action in rem may, whether or not the claim gives rise to a maritime lien on that ship, be brought in the High Court against:

- 134 (1) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise⁵; or
- 135 (2) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it⁶.

State-owned vessels are immune from arrest⁷, but otherwise a ship against which an action in rem has been instituted may, if necessary, be arrested and sold by proper process to meet established claims for wages⁸.

These provisions apply to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, but they do not extend the cases in which property or money is recoverable under the Merchant Shipping Act 1995⁹; and courts have a discretion to refuse to entertain an action in rem for wages by the master or member of the crew of a ship, not being a British ship, if the consul of the country to which the ship belongs on due notification of the action in rem protests against the action proceeding¹⁰.

1 See *The Sydney Cove* (1815) 2 Dods 11; *The Neptune* (1824) 1 Hag Adm 227; and PARA 127. As to the rights of the crew of a fishing vessel with regard to wages see PARA 479 et seq; as to the master's rights see PARA 477; and as to maritime liens see PARA 1014 et seq.

2 See the Merchant Shipping Act 1995 s 39(1); and PARA 476. Any term in an agreement which is inconsistent (see *A-G v Fargrove Steam Navigation Co Ltd* (1906) 23 TLR 230) with the seaman's right to wages is void: see the Merchant Shipping Act 1995 s 39(1); and PARA 476. See also *Cil v Owners of the Turiddu (First National Bank Intervening)* [1999] 2 All ER (Comm) 161, CA (seamen who have directed part of their wages to be paid through an agency to persons nominated by them have a lien over any arrears of wages, which takes priority over a bank's mortgage in respect of the vessel).

3 See the Supreme Court Act 1981 s 20(1)(a), (2)(o) (cited in PARA 127 et seq), s 21(1), (3) (cited in PARA 93). As to claims in rem generally see PARA 92 et seq; and as to claims in personam ('other claims') generally see PARA 94 et seq. As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq.

4 See the Supreme Court Act 1981 s 20(1)(a), (2)(o) (cited in PARA 127 et seq), s 21(1), (4)(a), (b) (cited in PARA 93). As to the meaning of 'ship' for these purposes see PARA 85 note 7.

5 See the Supreme Court Act 1981 s 20(1)(a), (2)(o) (cited in PARA 127 et seq), s 21(1), (4)(i) (cited in PARA 93). As to the meaning of 'beneficial owner' for these purposes see PARA 93 note 32.

6 See the Supreme Court Act 1981 s 20(1)(a), (2)(o) (cited in PARA 127 et seq), s 21(1), (4)(ii) (cited in PARA 93). See also *Vogiatzis v SS Fairport, The Fairport* [1967] P 167, [1966] 2 All ER 1026, [1966] 2 Lloyd's Rep 7; *The Aventicum* [1978] 1 Lloyd's Rep 184.

7 See the Crown Proceedings Act 1947 s 29(1) (cited in PARA 179); and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 103.

8 See the Supreme Court Act 1981 s 21(6) (cited in PARA 93). As to orders for sale see PARAS 178, 207.

9 See the Supreme Court Act 1981 s 20(7)(a), proviso; and PARA 86.

10 *The Herzogin Marie* (1861) Lush 292; *The Octavie* (1863) Brown & Lush 215; *The Nina* (1868) LR 2 PC 38; *The Leon XIII, Wardrop v The Leon XIII* (1883) 8 PD 121, 5 Asp MLC 73, CA. As to the limitation of jurisdiction in the case of ships belonging to states specified by order under the Consular Relations Act 1968 s 4 see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 303.

UPDATE

475 Admiralty jurisdiction

NOTES 3-9--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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476. Protection of certain rights and remedies.

A seaman's lien¹, his remedies for the recovery of his wages², his right to wages in case of the wreck or loss of his ship³, and any right he may have or obtain in the nature of salvage⁴ are not capable of being renounced by any agreement⁵. However, this does not affect such of the terms of any agreement made with the seamen belonging to a ship which, in accordance with the agreement, is to be employed on salvage service, as provide for the remuneration to be paid to them for salvage services rendered by that ship⁶.

1 As to the meaning of 'seaman' see PARA 424. As to maritime liens generally see PARA 1014 et seq.

2 See PARA 475. As to the rights of the crew of a fishing vessel with regard to wages see PARA 479 et seq; and as to the master's rights see PARA 477. As to the meaning of 'wages' see PARA 464 note 6.

3 See PARA 464. As to the meaning of 'ship' see PARA 229.

4 As to salvage claims generally see PARAS 113 et seq, 876 et seq.

5 Merchant Shipping Act 1995 s 39(1). As to the application of s 39 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

6 Merchant Shipping Act 1995 s 39(2).

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477. Remedies of master for remuneration, disbursements and liabilities.

The master¹ of a ship² has the same lien³ for his remuneration, and all disbursements or liabilities properly made or incurred by him on account of the ship⁴, as a seaman⁵ has for his wages⁶.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'ship' see PARA 229.

3 As to maritime liens generally see PARA 1014 et seq.

4 As to a master's employment, authority and liability see PARA 426 et seq.

5 As to the meaning of 'seaman' see PARA 424.

6 Merchant Shipping Act 1995 s 41. As to the application of s 41 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425. As to the meaning of 'wages' see PARA 464 note 6.

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(v) Claims against Seamen's Wages for Maintenance etc of Dependants

478. In general.

Where, during a seaman's¹ employment in a ship², expenses are incurred by a responsible authority³ for the benefit of any dependant of his and the expenses are of a kind specified in regulations⁴ and such further conditions, if any, as may be so specified are satisfied, the authority may by notice in writing complying with the regulations require the persons employing the seaman⁵:

- 136 (1) to retain for a period specified in the notice such proportion of his net wages as may be so specified⁶; and
- 137 (2) to give to the responsible authority as soon as may be notice in writing of the seaman's discharge⁷ from the ship⁸;

and the persons employing the seaman must comply with the notice and give notice in writing of its contents to the seaman⁹.

For these purposes;

- 138 (a) the following persons, and no others, are to be taken to be a seaman's dependants, that is to say, his spouse and any other person under the age of 19 whom he is liable, for the purposes of any enactment in any part of the United Kingdom, to maintain or in respect of whom he is liable under any such enactment to make contributions to a local authority¹⁰; and
- 139 (b) expenses incurred for the benefit of any person include, in addition to any payments made to him or on his behalf, expenses incurred for providing him with accommodation or care or for exercising supervision over him¹¹;

but no expenses may be specified in regulations made for these purposes¹² unless they are such that a magistrates' court has power under any enactment in force in any part of the United Kingdom to order the making of payments in respect thereof¹³.

Not more than the following proportion of a seaman's wages¹⁴ may be so retained, whether in pursuance of one or more notices¹⁵:

- 140 (i) one-half (if the notice or notices relates or relate to one dependant only)¹⁶;
- 141 (ii) two-thirds (if the notice or notices relates or relate to two or more dependants)¹⁷.

Where a responsible authority has so served a notice¹⁸ on the persons employing a seaman, a magistrates' court may, on the application of the authority, make an order for the payment to the authority of such sum, not exceeding the proportion of the seaman's wages which those persons were required¹⁹ to retain, having regard to the expenses incurred by the authority and the seaman's means, thinks fit²⁰.

Any sums paid out of a seaman's wages in pursuance of such an order are deemed to be paid to him in respect of his wages; and the service, on the persons who employed the seaman, of such an order or of an order dismissing an application for such an order terminates the period for which they were required to retain the wages²¹.

An application for such an order²² for the payment of any sum by the persons who employed the seaman is deemed, for the purposes of any proceedings, to be an application for an order against the seaman; but the order, when served on those persons, has effect as an order against them and may be enforced accordingly²³.

Any such notice or order²⁴ may be served by registered post or recorded delivery service²⁵.

The Secretary of State may make regulations²⁶ specifying²⁷:

- 142 (A) the expenses in respect of which a notice may be served by a responsible authority²⁸;
- 143 (B) any conditions that must be satisfied if such a notice is to be served²⁹;
- 144 (C) the period that may be specified in such a notice, being a period beginning with the service of the notice and ending a specified number of days after the seaman's discharge from his ship³⁰;
- 145 (D) the form of such a notice and the information to be contained therein³¹; and
- 146 (E) the amounts to be deducted from a seaman's wages in computing his net wages for the purposes of these provisions³².

1 As to the meaning of 'seaman' see PARA 424.

2 As to the meaning of 'ship' see PARA 229.

3 For these purposes, 'responsible authority' means the Secretary of State or (except in Northern Ireland) any local authority: Merchant Shipping Act 1995 s 40(10). As to the Secretary of State see PARA 38. As to local authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

4 Ie specified in regulations made under the Merchant Shipping Act 1995 s 40 (see the text and notes 26-32): see s 40(1).

5 Merchant Shipping Act 1995 s 40(1). As to the application of s 40 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425. The Maintenance Orders Act 1950 Pt I (ss 4-15) (jurisdiction) and Pt III (ss 26-32) (general) (see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 287 et seq) have effect as if an order under the Merchant Shipping Act 1995 s 40 were included among those referred to in the Maintenance Orders Act 1950 s 4(1), (2), s 9(1), (2) and s 12(1), (2); and any sum payable by any persons under an order made under the Merchant Shipping Act 1995 s 40 in any part of the United Kingdom may, in any other part of the United Kingdom, be recovered from them as a debt due to the authority on whose application the order was made: s 40(7). As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 Merchant Shipping Act 1995 s 40(1)(a).

7 As to when a seaman is regarded as discharged from a ship see PARA 460 note 4.

8 Merchant Shipping Act 1995 s 40(1)(b).

9 Merchant Shipping Act 1995 s 40(1). This provision is subject to s 40(3) (see the text and notes 14-17): see s 40(1).

10 Merchant Shipping Act 1995 s 40(2)(a).

11 Merchant Shipping Act 1995 s 40(2)(b).

12 Ie specified in regulations made under the Merchant Shipping Act 1995 s 40 (see the text and notes 26-32): see s 40(2).

13 Merchant Shipping Act 1995 s 40(2).

14 As to the meaning of 'wages' see PARA 464 note 6.

- 15 Merchant Shipping Act 1995 s 40(3).
- 16 Merchant Shipping Act 1995 s 40(3)(a).
- 17 Merchant Shipping Act 1995 s 40(3)(b).
- 18 Ie under the Merchant Shipping Act 1995 s 40: see s 40(4).
- 19 Ie by virtue of the Merchant Shipping Act 1995 s 40: see s 40(4).
- 20 Merchant Shipping Act 1995 s 40(4).
- 21 Merchant Shipping Act 1995 s 40(5).
- 22 Ie under the Merchant Shipping Act 1995 s 40: see s 40(6).
- 23 Merchant Shipping Act 1995 s 40(6).
- 24 Ie under the Merchant Shipping Act 1995 s 40: see s 40(8).
- 25 Merchant Shipping Act 1995 s 40(8).
- 26 As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.
- 27 Merchant Shipping Act 1995 s 40(9). At the date at which this volume states the law, no such regulations had been made under s 40(9) but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Maintenance of Seamen's Dependants) Regulations 1972, SI 1972/1635 (amended by SI 1972/1875; SI 1988/479) have effect as if so made (see notes 28-32).
- 28 Merchant Shipping Act 1995 s 40(9)(a). See the Merchant Shipping (Maintenance of Seamen's Dependants) Regulations 1972, SI 1972/1635, reg 4 (amended by SI 1972/1875; SI 1988/479).
- 29 Merchant Shipping Act 1995 s 40(9)(b). See the Merchant Shipping (Maintenance of Seamen's Dependants) Regulations 1972, SI 1972/1635, reg 2.
- 30 Merchant Shipping Act 1995 s 40(9)(c). See the Merchant Shipping (Maintenance of Seamen's Dependants) Regulations 1972, SI 1972/1635, reg 3(1)(b).
- 31 Merchant Shipping Act 1995 s 40(9)(d). See the Merchant Shipping (Maintenance of Seamen's Dependants) Regulations 1972, SI 1972/1635, reg 3.
- 32 Merchant Shipping Act 1995 s 40(9)(e). The amounts specified under head (E) in the text may include amounts allotted by allotment notes issued under s 36 (see PARA 473): see s 40(9)(e). See the Merchant Shipping (Maintenance of Seamen's Dependants) Regulations 1972, SI 1972/1635, reg 5.

UPDATE

478 In general

NOTE 28--SI 1972/1635 reg 4 further amended: SI 2009/462.

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(vi) Wages Provisions relating to Fishing Vessels

479. Payment of wages under crew agreement relating to a United Kingdom fishing vessel.

The wages¹ due to a seaman² under a crew agreement relating to a United Kingdom fishing vessel³ must⁴ be paid to him in full⁵.

1 As to the meaning of 'wages' see PARA 464 note 6.

2 As to the meaning of 'seaman' see PARA 424.

3 As to the meaning of 'fishing vessel' see PARA 230 note 9; and as to the meaning of 'United Kingdom fishing vessel' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to crew agreements relating to fishing vessels see PARA 458.

4 Ie except as provided by or under the Merchant Shipping Act 1995 Pt III (ss 24-84) or any other enactment: see s 110. As to the payment of wages due to a seaman see in particular ss 30-41; and PARA 467 et seq. However, s 110 applies to the exclusion of s 30 (payment of seaman's wages) (see PARA 467); and s 112 (accounts of wages and catch) (see PARA 481) applies to the exclusion of s 31 (account of seaman's wages) (see PARA 468): see s 24(3); and PARA 423 note 7.

5 Merchant Shipping Act 1995 s 110. As to the Secretary of State's power to grant exemptions see PARA 425.

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480. Regulations relating to wages etc in respect of employment in a fishing vessel.

As from a day to be appointed, the following provisions have effect¹.

The Secretary of State's general power to make regulations relating to seamen's wages² and accounts³ includes power to provide that the amount of a deduction of a description specified in the regulations from wages in respect of employment in a fishing vessel⁴ is to be determined by a body established or approved by the Secretary of State in pursuance of regulations made under the general provisions relating to breaches by seamen of codes of conduct⁵.

1 The Merchant Shipping Act 1995 s 111 does not have effect until the Secretary of State by order appoints a day for s 111 to come into force: see s 314(3), Sch 14 para 5(1), (2); and PARA 16 note 1. At the date at which this volume states the law, no such order had been made. As to the Secretary of State see PARA 38;

2 As to the meaning of 'seaman' see PARA 424; and as to the meaning of 'wages' see PARA 464 note 6.

3 The power conferred by the Merchant Shipping Act 1995 s 32 (see PARA 469): see s 111. See note 1. By virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Seamen's Wages and Accounts) (Fishing Vessels) Regulations 1972, SI 1972/1701 (amended by SI 1988/2064; SI 1999/3360) (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1027) have effect as if made under the Merchant Shipping Act 1995 s 32. As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.

4 As to the meaning of 'fishing vessel' see PARA 230 note 9.

5 Merchant Shipping Act 1995 s 111. The text refers to regulations made under s 60 (see PARA 506): see s 111. See note 1. As to the Secretary of State's power to grant exemptions see PARA 425.

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481. Accounts of wages and catch.

The persons employing any seaman¹ under a crew agreement relating to a United Kingdom fishing vessel² must³ deliver to him at a time prescribed by regulations⁴ an account of the wages⁵ due to him under that crew agreement and of the deductions subject to which the wages are payable⁶.

Where the wages of any person employed in a United Kingdom fishing vessel are in any manner related to the catch, the persons employing him must at a time prescribed by such regulations deliver to the master⁷ an account (or, if the master is the person employing him, make out an account) showing how those wages (or any part of those wages related to the catch) are arrived at and must make the account available to the crew in such manner as may be prescribed by the regulations⁸.

Where there is a partnership between the master and any members of the crew of a United Kingdom fishing vessel, the owner of the vessel must at a time prescribed by such regulations make out an account showing the sums due to each partner in respect of his share and must make the account available to the partners⁹.

The Secretary of State may make regulations prescribing the time at which any such account¹⁰ is to be delivered or made out, and the manner in which the account¹¹ is to be made available¹².

If a person fails without reasonable excuse to comply with the provisions governing the accounting of wages (and catch where wages are related to catch) in relation to a United Kingdom fishing vessel, he commits an offence¹³.

1 As to the meaning of 'seaman' see PARA 424.

2 As to the meaning of 'fishing vessel' see PARA 230 note 9; and as to the meaning of 'United Kingdom fishing vessel' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to crew agreements relating to fishing vessels see PARA 458.

3 Ie subject to regulations made under the Merchant Shipping Act 1995 s 32 (see PARA 469) or s 75 (see PARA 529): see s 112(1).

4 Ie prescribed by regulations made under the Merchant Shipping Act 1995 s 112: see s 112(1). As to the Secretary of State see PARA 38; and as to his power to make subordinate legislation under the Merchant Shipping Act 1995 generally see PARA 41.

5 As to the meaning of 'wages' see PARA 464 note 6.

6 Merchant Shipping Act 1995 s 112(1). Section 112 applies to the exclusion of s 30 (see PARA 467): see s 24(3); and PARA 423 note 7. As to the Secretary of State's power to grant exemptions see PARA 425. At the date at which this volume states the law, no regulations under s 112 had been made and none have effect as if so made. However, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Seamen's Wages and Accounts) (Fishing Vessels) Regulations 1972, SI 1972/1701 (amended by SI 1988/2064; SI 1999/3360) (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1027) have effect as if made under the Merchant Shipping Act 1995 s 32 (as to which see PARA 469; and see note 3).

7 As to the meaning of 'master' see PARA 424.

8 Merchant Shipping Act 1995 s 112(2).

9 Merchant Shipping Act 1995 s 112(3).

10 le any account required by the Merchant Shipping Act 1995 s 112: see s 112(4).

11 le the account required by the Merchant Shipping Act 1995 s 112(2), (3) (see the text and notes 7-9): see s 112(4).

12 Merchant Shipping Act 1995 s 112(4).

13 See the Merchant Shipping Act 1995 s 112(5); and PARA 1126.

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482. Effect of general restriction on assignment of and charge upon seamen's wages.

The general statutory restriction on the assignment of and charge upon a seaman's wages¹ does not affect the operation of the Attachment of Earnings Act 1971² in relation to wages due to a person employed in a fishing vessel³.

1 I.e. the Merchant Shipping Act 1995 s 34 (see PARA 471); see s 113(1)(a). As to the meaning of 'seaman' see PARA 424; and as to the meaning of 'wages' see PARA 464 note 6.

2 As to the operation of the Attachment of Earnings Act 1971 see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 73 (2009) PARA 627.

3 Merchant Shipping Act 1995 s 113(1)(a). As to the meaning of 'fishing vessel' see PARA 230 note 9. As to the Secretary of State's power to grant exemptions see PARA 425.

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483. Effect of general right, or loss of right, to seamen's wages in certain circumstances.

The statutory right, or loss of right, to a seaman's wages¹ in circumstances where a United Kingdom ship² is wrecked or lost or is sold while outside the United Kingdom or otherwise ceases to be a United Kingdom ship³ does not apply to so much of the wages of a seaman employed in a fishing vessel⁴ as is in any manner related to the catch⁵.

1 As to the meaning of 'seaman' see PARA 424; and as to the meaning of 'wages' see PARA 464 note 6.

2 As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 The right, or loss of right, to wages contained in the Merchant Shipping Act 1995 s 38 (see PARA 464): see s 114.

4 As to the meaning of 'fishing vessel' see PARA 230 note 9.

5 Merchant Shipping Act 1995 s 114. As to the Secretary of State's power to grant exemptions see PARA 425.

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(5) CONDITION OF SHIP AND WELFARE OF CREW

(i) Implied Obligation as to Seaworthiness of Ship

484. Obligation of shipowners as to seaworthiness.

In every contract of employment between the owner of a United Kingdom ship¹ and the master² of or any seaman³ employed in the ship there is to be implied an obligation on the owner of the ship that⁴: (1) the owner of the ship⁵; (2) the master of the ship⁶; and (3) every agent charged with the loading of the ship, the preparing of the ship for sea, or the sending of the ship to sea⁷, must use all reasonable means to ensure the seaworthiness⁸ of the ship for the voyage at the time when the voyage commences and to keep the ship in a seaworthy condition for the voyage during the voyage⁹.

This obligation¹⁰ applies notwithstanding any agreement to the contrary¹¹; and no liability on the owner of a ship arises under this obligation¹² in respect of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the sending of the ship to sea in such a state was reasonable and justifiable¹³.

1 As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 As to the meaning of 'master' see PARA 424.

3 As to the meaning of 'seaman' see PARA 424.

4 Merchant Shipping Act 1995 s 42(1). As to the application of s 42 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

5 Merchant Shipping Act 1995 s 42(1)(a).

6 Merchant Shipping Act 1995 s 42(1)(b).

7 Merchant Shipping Act 1995 s 42(1)(c).

8 For these purposes, 'seaworthy' means that the ship should be in a fit state as to repairs, equipment and crew, and in all other respects, to encounter the ordinary perils of the voyage; see *Dixon v Sadler* (1839) 5 M & W 405 at 414; and **CARRIAGE AND CARRIERS**. The master's negligence in not using with proper care the means of safety provided does not make the ship unseaworthy within the meaning of the Merchant Shipping Act 1995 s 42: see *Hedley v Pinkney & Sons Steamship Co Ltd* [1894] AC 222, HL.

9 Merchant Shipping Act 1995 s 42(1).

10 Ie under the Merchant Shipping Act 1995 s 42(1) (see the text and notes 1-9): see s 42(2).

11 Merchant Shipping Act 1995 s 42(2).

12 Ie under the Merchant Shipping Act 1995 s 42(1) (see the text and notes 1-9): see s 42(3).

13 Merchant Shipping Act 1995 s 42(3).

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(ii) Crew Accommodation

485. Power to make regulations.

The Secretary of State¹ may make regulations² with respect to the crew accommodation³ to be provided in United Kingdom ships⁴. Regulations so made may⁵, in particular⁶:

- 147 (1) prescribe the minimum space per man which must be provided by way of sleeping accommodation for seamen and the maximum number of persons by whom a specified part of such sleeping accommodation may be used⁷;
- 148 (2) regulate the position in the ship in which the crew accommodation or any part thereof may be located and the standards to be observed in the construction, equipment and furnishing of any such accommodation⁸;
- 149 (3) require the submission to a surveyor of ships⁹ of plans and specifications of any works proposed to be carried out for the purpose of the provision or alteration of any such accommodation and authorise the surveyor to inspect any such works¹⁰;
- 150 (4) provide for the maintenance and repair of any such accommodation and prohibit or restrict the use of any such accommodation for purposes other than those for which it is designed¹¹;

and such regulations may:

- 151 (a) make different provision with respect to different descriptions of ship or with respect to ships which were registered¹² in the United Kingdom at different dates or the construction of which was begun at different dates and with respect to crew accommodation provided for seamen of different descriptions¹³;
- 152 (b) exempt ships of any description from any requirements of the regulations, and the Secretary of State may grant other exemptions from any such requirement with respect to any ship¹⁴;
- 153 (c) require the master¹⁵ of a ship or any officer authorised by him for the purpose to carry out such inspections of the crew accommodation as may be prescribed by the regulations¹⁶.

If the provisions of any of the regulations are contravened¹⁷ in the case of a ship, the owner or master is liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁸ and the ship, if in the United Kingdom, may be detained¹⁹.

1 As to the Secretary of State see PARA 38.

2 As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.

3 For these purposes, 'crew accommodation' includes sleeping rooms, mess rooms, sanitary accommodation, hospital accommodation, recreation accommodation, store rooms and catering accommodation provided for the use of seamen but does not include any accommodation which is also used by

or provided for the use of passengers: Merchant Shipping Act 1995 s 43(7). As to the meaning of 'seaman' see PARA 424.

4 Merchant Shipping Act 1995 s 43(1). As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the application of the Merchant Shipping Act 1995 s 43 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

At the date at which this volume states the law, the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508 (see PARA 486) and (to some extent) the Fishing Vessels (Safety of 15-24 Metre Vessels) Regulations 2002, SI 2002/2201 (see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARAS 1022, 1023) have been made under the Merchant Shipping Act 1995 s 43 and, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220 (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1023) have effect as if so made.

As to the powers of inspectors appointed under the Merchant Shipping Act 1995 s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 43 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 43 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

5 le without prejudice to the generality of the Merchant Shipping Act 1995 s 43(1): see s 43(2).

6 Merchant Shipping Act 1995 s 43(2).

7 Merchant Shipping Act 1995 s 43(2)(a).

8 Merchant Shipping Act 1995 s 43(2)(b).

9 As to the meaning of 'surveyor of ships' see PARA 46 note 13. As to the appointment of surveyors see PARA 46.

10 Merchant Shipping Act 1995 s 43(2)(c).

11 Merchant Shipping Act 1995 s 43(2)(d).

12 As to the meaning of 'registered' under the Merchant Shipping Act 1995 see PARA 254 note 2.

13 Merchant Shipping Act 1995 s 43(3).

14 Merchant Shipping Act 1995 s 43(4).

15 As to the meaning of 'master' see PARA 424.

16 Merchant Shipping Act 1995 s 43(5).

17 As to the meaning of 'contravention' see PARA 50 note 3.

18 As to the meaning of 'standard scale' see PARA 1099.

19 Merchant Shipping Act 1995 s 43(6). As to enforcing the detention of a ship under the Merchant Shipping Act 1995 see PARA 1253.

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486. Crew accommodation.

The requirements relating to crew accommodation¹ to be complied with by ships registered in the United Kingdom² cover:

- 154 (1) divisions between the crew accommodation and other parts of the ship³;
- 155 (2) interior bulkheads⁴;
- 156 (3) overhead decks⁵;
- 157 (4) floor decks⁶;
- 158 (5) access and escape arrangements⁷;
- 159 (6) pipes in crew accommodation spaces⁸;
- 160 (7) awnings⁹;
- 161 (8) heating¹⁰;
- 162 (9) lighting¹¹;
- 163 (10) ventilation¹²;
- 164 (11) sidescuttles and windows¹³;
- 165 (12) drainage¹⁴;
- 166 (13) interior finishes¹⁵;
- 167 (14) marking¹⁶;
- 168 (15) sleeping rooms¹⁷;
- 169 (16) beds¹⁸;
- 170 (17) furniture and fittings in sleeping rooms¹⁹;
- 171 (18) mess rooms²⁰;
- 172 (19) furniture and fittings in mess rooms²¹;
- 173 (20) recreation spaces²²;
- 174 (21) offices²³;
- 175 (22) sanitary accommodation²⁴;
- 176 (23) supply of drinking water and the supply of fresh water²⁵;
- 177 (24) facilities for washing and drying clothes and for hanging oilskins and working clothes²⁶;
- 178 (25) galleys²⁷;
- 179 (26) dry provision store rooms²⁸;
- 180 (27) cold store rooms and refrigerating equipment²⁹;
- 181 (28) hospitals³⁰;
- 182 (29) medical cabinet³¹;
- 183 (30) protection from mosquitoes³²;
- 184 (31) maintenance and inspection of crew accommodation³³.

It is the duty of an owner of a ship to which these regulations apply³⁴ to ensure that: (a) the floor coverings in the decks as referred to in head (4) above and in every permanent hospital as referred to in head (28) above³⁵; (b) the sidescuttles or windows in a sleeping room, day room, mess room, recreation room or hospital ward as referred to in head (11) above³⁶; (c) the vacuum discharge pipe systems that are required to be connected to every water closet and the thermostatic mixing valves that required to be fitted to every shower as referred to in head (22) above³⁷; and (d) plant used to produce drinking water and/or fresh water on board a ship as referred to in head (23) above³⁸, are of an approved type³⁹. However, the Secretary of State

may grant exemptions from all or any of the provisions relating to approved equipment⁴⁰, as may be specified in the exemption, on such terms (if any) as he may so specify and may, subject to giving reasonable notice, alter or cancel any such exemption⁴¹. Any owner who fails to ensure the supply of approved equipment as mentioned in heads (a) to (d) above commits an offence⁴²; and the ship may be detained⁴³.

1 le the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, whose preliminary provisions relate to citation, commencement and revocation (see reg 1); and interpretation (see reg 2 (amended by SI 2005/2114)). General provisions regarding crew accommodation requirements are also set out: see the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 4.

The Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, apply to every United Kingdom ship, except fishing vessels, pleasure vessels, and ships belonging to a general lighthouse authority, and excepting as well as any ship the keel of which was laid or which was at a similar stage of construction before 1 July 1979, and which has not been substantially reconstructed or altered since that date, provided that it complies with the standards laid down in the Merchant Shipping (Crew Accommodation) Regulations 1978, SI 1978/795 (revoked), as if they had not been revoked: see the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 3. However, the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, do not apply to certain vessels which have met the stated requirements set out in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771: see PARA 610. As to fishing vessels see the Fishing Vessels (Safety of 15-24 Metre Vessels) Regulations 2002, SI 2002/2201; the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220; and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1023. As to the lighthouse authorities generally see PARA 1068 et seq.

2 As to the registration of ships under the Merchant Shipping Act 1995 see PARA 254 note 2. As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 5.

4 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 6.

5 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 7.

6 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 8.

7 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 9.

8 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 10.

9 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 11.

10 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 12.

11 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 13, Schedule.

12 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 14.

13 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 15.

14 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 16.

15 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 17.

16 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 18.

17 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 19.

18 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 20.

19 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 21.

20 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 22.

21 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 23.

- 22 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 24.
- 23 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 25.
- 24 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 26.
- 25 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 27.
- 26 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 28.
- 27 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 29.
- 28 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 30.
- 29 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 31.
- 30 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 32.
- 31 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 33.
- 32 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 34.
- 33 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 35.
- 34 As to the application of the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, see note 1.
- 35 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 36(1)(a).
- 36 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 36(1)(b).
- 37 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 36(1)(c), (d).
- 38 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 36(1)(e).
- 39 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 36(1). For these purposes, 'approved', in relation to an item of equipment, means approved by the Secretary of State or by a person specified in Merchant Shipping Notice 1645 (cancelled) (now superseded by 1734(M+F) and by 1735(M+F), which both amend 1688 (cancelled) and 1714(M+F)) in relation to that equipment: reg 36(2). As to the Secretary of State see PARA 38.
- 40 Ie the requirements of the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, Pt III (regs 36-39): see reg 37.
- 41 Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 37.
- 42 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 38; and PARA 1127.
- 43 See the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 39; and PARA 1127.

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(iii) Provisions and Medical Care

487. Complaints about provisions or water.

If three or more seamen¹ employed in a United Kingdom ship² consider that the provisions or water provided for the seamen employed in that ship are not in accordance with safety regulations³ containing requirements as to the provisions and water to be provided on ships, whether of bad quality, unfitness for use or deficiency in quantity, they may complain to the master⁴, who must investigate the complaint⁵.

If the seamen are dissatisfied with the action taken by the master as a result of his investigation or by his failure to take any action, they may state their dissatisfaction to him and may claim to complain to a superintendent⁶ or proper officer⁷; and thereupon the master must make adequate arrangements to enable the seamen to do so as soon as the service of the ship permits⁸. The superintendent or proper officer to whom a complaint has been so made must investigate the complaint and may examine the provisions or water or cause them to be examined⁹.

If the master fails without reasonable excuse to comply with the procedure governing complaints so made to a superintendent or proper officer¹⁰, he commits an offence¹¹; and, if the master has been notified in writing by the person duly making an examination of the provisions or water¹² that any provisions or water are found to be unfit for use or not of the quality required by the safety regulations, then: (1) if they are not replaced within a reasonable time, the master or owner commits an offence unless he proves that the failure to replace them was not due to his neglect or default¹³; or (2) if the master without reasonable excuse permits them to be used, he commits an offence¹⁴.

1 As to the meaning of 'seaman' see PARA 424.

2 As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 As to the meaning of 'safety regulations' see PARA 591. As to the requirements regarding provisions and waters see PARA 627.

4 As to the meaning of 'master' see PARA 424.

5 Merchant Shipping Act 1995 s 44(1). As to the application of s 44 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 44 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 44 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

6 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

7 As to the meaning of 'proper officer' see PARA 48 note 11.

8 Merchant Shipping Act 1995 s 44(2).

- 9 Merchant Shipping Act 1995 s 44(3).
- 10 le the provisions of the Merchant Shipping Act 1995 s 44(2) (see the text and notes 6-8): see s 44(4).
- 11 See the Merchant Shipping Act 1995 s 44(4); and PARA 1128.
- 12 le under the Merchant Shipping Act 1995 s 44(3) (see the text and note 9): see s 44(4).
- 13 See the Merchant Shipping Act 1995 s 44(4)(a); and PARA 1128.
- 14 See the Merchant Shipping Act 1995 s 44(4)(b); and PARA 1128.

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488. Expenses of medical and other treatment during voyage.

If a person, while employed in a United Kingdom ship¹, receives outside the United Kingdom any surgical or medical treatment or such dental or optical treatment, including the repair or replacement of any appliance, as cannot be postponed without impairing efficiency, the reasonable expenses thereof must be borne by the persons employing him².

If a person dies while employed in a United Kingdom ship³ and is buried or cremated outside the United Kingdom, the expenses of his burial or cremation must also be borne by those persons⁴.

1 As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 Merchant Shipping Act 1995 s 45(1). As to the application of s 45 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

3 For these purposes, the reference to dying in a ship includes a reference to dying in a ship's boat: Merchant Shipping Act 1995 s 45(3); and, for the purposes of Pt III (ss 24-84) (see PARAS 423, 489 et seq), 'ship's boat' includes a life-raft: s 84(1).

4 Merchant Shipping Act 1995 s 45(2).

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(6) MANNING, QUALIFICATIONS AND TRAINING

(i) In general

489. In general.

The provisions governing manning, qualifications, training and uniform as they relate to masters¹ and seamen² apply to every United Kingdom ship³, and also to any ship registered under the law of a country outside the United Kingdom which carries passengers⁴ either:

- 185 (1) between places in the United Kingdom or between the United Kingdom and the Isle of Man or any of the Channel Islands⁵; or
- 186 (2) on a voyage which begins and ends at the same place in the United Kingdom and on which the ship calls at no place outside the United Kingdom⁶.

1 As to the meaning of 'master' see PARA 424.

2 I.e. the Merchant Shipping Act 1995 ss 47-51 (see PARA 490 et seq): see s 46. As to the meaning of 'seaman' see PARA 424.

3 As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping Act 1995 s 46. As to the application of s 46 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 46 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 46 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

5 Merchant Shipping Act 1995 s 46(a).

6 Merchant Shipping Act 1995 s 46(b).

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(ii) Manning

A. IN GENERAL

490. Power to make regulations in relation to manning.

The Secretary of State¹ may make regulations²:

- 187 (1) requiring applicable ships³ to carry such number of qualified officers of any description, qualified doctors and qualified cooks and such number of other seamen⁴ or qualified seamen of any description as may be specified in the regulations⁵; and
- 188 (2) prescribing or enabling the Secretary of State to specify standards of competence to be attained and other conditions to be satisfied, subject to any exceptions allowed by or under the regulations, by officers and other seamen of any description in order to be qualified for the purposes of these provisions⁶.

The Secretary of State may not, however, exercise his power to make regulations requiring ships to carry seamen other than doctors and cooks except to the extent that it appears to him necessary or expedient in the interests of safety⁷.

Such regulations may make different provision for different descriptions of ship or ships of the same description in different circumstances⁸.

Without prejudice to the generality of head (2) above, the conditions prescribed or specified thereunder may include conditions as to nationality⁹; and regulations made for the purposes of head (2) above may make provision, or enable the Secretary of State to make provision, for¹⁰:

- 189 (a) the manner in which the attainment of any standard or the satisfaction of any other condition is to be evidenced¹¹;
- 190 (b) the conduct of any examinations, the conditions for admission to them and the appointment and remuneration of examiners¹²; and
- 191 (c) the issue, form and recording of certificates and other documents¹³;

and different provisions may be made or enabled to be made for different circumstances¹⁴.

If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a certificate or other document which may be so issued¹⁵, he commits an offence¹⁶.

1 As to the Secretary of State see PARA 38.

2 Merchant Shipping Act 1995 s 47(1). This power is subject to s 47(2) (see the text and note 7): see s 47(1). However, the power to make regulations under s 47 includes power to make regulations providing that pre-1979 certificates must, except in such cases as are specified in the regulations, be deemed for the purposes of such of the provisions of Pt III (ss 24-84) (see PARAS 423 et seq, 491 et seq) as are so specified to be issued in pursuance of s 47 and to confer on the persons to whom they were issued such qualifications for the purposes of s 47 as are so specified: s 314(3), Sch 14 para 4(1). For these purposes, 'pre-1979 certificate' means a

certificate granted under the Merchant Shipping Act 1894 s 93, 99 or 414 (all repealed), a certificate referred to in an Order in Council made under s 102 (repealed), a certificate granted under the Merchant Shipping Act 1906 s 27(2) (repealed) or by an institution approved in pursuance of s 27(2) (repealed) and a certificate granted under the Merchant Shipping Act 1948 s 5 (repealed): Merchant Shipping Act 1995 Sch 14 para 4(2). As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.

In exercise of the power conferred by s 47, the Secretary of State has made the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348 (see PARA 496); the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320 (see PARAS 497, 634, 635); the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARA 614 et seq); and the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223 (see PARA 499). By virtue of the Interpretation Act 1978 s 17(2)(b), the following regulations also have effect as if made under the Merchant Shipping Act 1995 s 47: the Merchant Shipping (Certification of Ships' Cooks) Regulations 1981, SI 1981/1076 (see PARA 498); the Fishing Vessels (Certification of Deck Officers and Engineer Officers) Regulations 1984, SI 1984/1115 (see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1024); and the Merchant Shipping (Officer Nationality) Regulations 1995, SI 1995/1427 (see PARA 495). The Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, extends a part of its provisions, and the provisions of the Merchant Shipping Act 1995 s 47 and s 48 (as to which see PARA 491), in so far as they have not already been so extended, to specified classes of non-United Kingdom ships which are passenger craft operating on inland waterways or on some short coastal voyages: see PARA 499.

As to the powers of inspectors appointed under the Merchant Shipping Act 1995 s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 47 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 47 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

3 le ships to which the Merchant Shipping Act 1995 s 47 applies: see s 47(1). As to the application of s 47 see PARAS 423, 489. As to the power to grant exemptions with respect to fishing vessels see PARA 425. As to the meaning of 'ship' see PARA 229.

4 As to the meaning of 'seaman' see PARA 424.

5 Merchant Shipping Act 1995 s 47(1)(a).

6 Merchant Shipping Act 1995 s 47(1)(b).

7 Merchant Shipping Act 1995 s 47(2).

8 Merchant Shipping Act 1995 s 47(3).

9 Merchant Shipping Act 1995 s 47(4).

10 Merchant Shipping Act 1995 s 47(4).

11 Merchant Shipping Act 1995 s 47(4)(a).

12 Merchant Shipping Act 1995 s 47(4)(b).

13 Merchant Shipping Act 1995 s 47(4)(c). A certificate issued under s 47(4) is admissible in evidence: see s 287(2); and PARA 1109.

14 Merchant Shipping Act 1995 s 47(4).

15 le under the Merchant Shipping Act 1995 s 47 (see the text and notes 1-14): see s 47(5).

16 See the Merchant Shipping Act 1995 s 47(5); and PARA 1129.

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491. Power to exempt from manning requirements.

The Secretary of State¹ may exempt any ship² or description of ship from any requirements of regulations relating to manning requirements made by him³. An exemption so given may be confined to a particular period or to one or more particular voyages⁴.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'ship' see PARA 229.

3 Merchant Shipping Act 1995 s 48(1). The text refers to regulations made under s 47 (see PARA 490): see s 48(1). As to the application of s 48 see PARAS 423, 489; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

The fee for the granting by the Secretary of State of an exemption, pursuant to s 48 (power to exempt from manning requirements), from the requirements in the Merchant Shipping (Officer Nationality) Regulations 1995, SI 1995/1427, reg 3 (see PARA 495) relating to a strategic ship is £160: Merchant Shipping (Fees) Regulations 2006, SI 2006/2055, reg 3, Sch 1 Pt 15.

As to the powers of inspectors appointed under the Merchant Shipping Act 1995 s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 48 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 48 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

4 Merchant Shipping Act 1995 s 48(2).

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492. Requirements as to crew's knowledge of English.

Where, in the opinion of a superintendent¹ or proper officer², the crew of a ship³ consists of or includes persons who may not understand orders given to them in the course of their duty because of their insufficient knowledge of English and the absence of adequate arrangements for transmitting the orders in a language of which they have sufficient knowledge⁴, then:

- 192 (1) if the superintendent or proper officer has informed the master⁵ of that opinion, the ship must not go to sea⁶; and
- 193 (2) if the ship is in the United Kingdom⁷, it may be detained⁸.

If a ship goes to sea or attempts to go to sea in contravention of these restrictions⁹, the owner or master is liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁰.

1 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

2 As to the meaning of 'proper officer' see PARA 48 note 11.

3 I.e. any ship to which the Merchant Shipping Act 1995 s 51 applies: see s 51(1). As to the meaning of 'ship' see PARA 229. As to the application of s 51 see PARAS 423, 489.

4 Merchant Shipping Act 1995 s 51(1). As to the power to grant exemptions with respect to fishing vessels see PARA 425.

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 51 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 51 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

5 As to the meaning of 'master' see PARA 424.

6 Merchant Shipping Act 1995 s 51(1)(a). As to the meaning of 'going to sea' for these purposes see PARA 450 note 13.

7 As to the meaning of 'United Kingdom' see PARA 17 note 3.

8 Merchant Shipping Act 1995 s 51(1)(b). As to enforcing the detention of a ship under the Merchant Shipping Act 1995 see PARA 1253.

9 I.e. in contravention of the Merchant Shipping Act 1995 s 51(1) (see the text and notes 1-8): see s 51(2); and PARA 1139.

10 See the Merchant Shipping Act 1995 s 51(2); and PARA 1139.

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493. Medical treatment on board ship.

Where a United Kingdom ship¹ does not carry a doctor² among the seamen³ employed in it, the master⁴ must make arrangements for securing that any medical attention on board the ship is given either by him or under his supervision by a person appointed by him for the purpose⁵.

1 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

2 As from a day to be appointed, this reference to 'doctor' is repealed and is replaced by the words 'registered medical practitioner': see the Merchant Shipping Act 1995 s 53 (prospectively amended by SI 2002/3135). However, at the date at which this volume states the law, no such day had been appointed. As to registered medical practitioners see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 1 et seq.

3 As to the meaning of 'seaman' see PARA 424.

4 As to the meaning of 'master' see PARA 424.

5 Merchant Shipping Act 1995 s 53. As to the application of s 53 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 53 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 53 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

UPDATE

493 Medical treatment on board ship

NOTE 2--Appointed day is 16 November 2009: London Gazette, 21 August 2009.

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494. Special certificates of competence.

The Secretary of State¹ may issue and record documents certifying the attainment of any standard of competence relating to ships² or their operation, notwithstanding that the standard is not among those prescribed or otherwise specified by the Secretary of State³; and he may, in relation thereto, make regulations⁴ for purposes corresponding⁵ to those regarding nationality and the proof of standards of competence⁶.

If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a document which may be so issued⁷, he commits an offence⁸.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'ship' see PARA 229.

3 Ie under the Merchant Shipping Act 1995 s 47(1)(b) (see PARA 490): see s 54(1).

4 As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41; and as to the Secretary of State's power to make regulations prescribing fees to be charged in respect of the issue or recording of any certificate, licence or other document see PARA 62.

5 Ie purposes corresponding to those mentioned in the Merchant Shipping Act 1995 s 47(4) (see PARA 490): see s 54(1).

6 Merchant Shipping Act 1995 s 54(1). At the date at which this volume states the law, no such regulations had been made under s 54. As to the application of s 54 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

7 Ie under the Merchant Shipping Act 1995 s 54 (see the text and notes 1-6): see s 54(2); and PARA 1141.

8 See the Merchant Shipping Act 1995 s 54(2); and PARA 1141.

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 54 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 54 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

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B. QUALIFICATIONS, STANDARDS OF COMPETENCE TO BE SATISFIED ETC

495. Officer nationality requirements for masters of strategic ships.

The master of every strategic ship, that is to say:

- 194 (1) a British registered fishing vessel¹ of 24 metres or more in length²; or
- 195 (2) a United Kingdom ship³ of 500 tons⁴ or more which is a cruise ship⁵, a product tanker⁶ or a ro-ro ship⁷,

must be:

- 196 (a) a Commonwealth citizen⁸; or
- 197 (b) an EEA⁹ national¹⁰; or
- 198 (c) a national of a state, other than an EEA state, which is a member of the North Atlantic Treaty Organisation¹¹.

1 For these purposes, 'British registered fishing vessel' means a fishing vessel registered in the register of British ships established under the Merchant Shipping Act 1995 s 8 (see PARA 254): Merchant Shipping (Officer Nationality) Regulations 1995, SI 1995/1427, reg 2; Interpretation Act 1978 s 17(2)(b).

2 For these purposes, 'length', in relation to a British registered fishing vessel, means the register length shown on the vessel's certificate of registry: Merchant Shipping (Officer Nationality) Regulations 1995, SI 1995/1427, reg 2. As to certificates of registry see PARA 298 et seq.

3 For these purposes, 'United Kingdom ship' has the same meaning as in the Merchant Shipping Act 1995 s 85(2) (see PARA 591 note 4): Merchant Shipping (Officer Nationality) Regulations 1995, SI 1995/1427, reg 2; Interpretation Act 1978 s 17(2)(b).

4 For these purposes, 'tons' means gross tons: see the Merchant Shipping (Officer Nationality) Regulations 1995, SI 1995/1427, reg 2.

5 For these purposes, 'cruise ship' means a passenger ship of Class I, within the meaning of the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514 (see PARA 599 note 4), certified to carry more than 200 passengers: Merchant Shipping (Officer Nationality) Regulations 1995, SI 1995/1427, reg 2; Interpretation Act 1978 s 17(2)(b).

6 For these purposes, 'product tanker' means either an oil tanker constructed for the carriage of petroleum products in bulk or a chemical tanker constructed for the carriage in bulk of any liquid chemical listed in the 'International Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk (IBC Code)' (1990 Edition), published by the International Maritime Organisation: Merchant Shipping (Officer Nationality) Regulations 1995, SI 1995/1427, reg 2. As to the International Maritime Organisation see PARA 13.

7 For these purposes, 'ro-ro ship' means a ship provided with cargo or vehicle spaces in which cargo or vehicles can be loaded and unloaded in a horizontal direction: Merchant Shipping (Officer Nationality) Regulations 1995, SI 1995/1427, reg 2.

8 Merchant Shipping (Officer Nationality) Regulations 1995, SI 1995/1427, reg 3(a). As to who are Commonwealth citizens see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 11.

9 The European Economic Area ('EEA') is formed under the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183).

10 Merchant Shipping (Officer Nationality) Regulations 1995, SI 1995/1427, reg 3(b).

11 Merchant Shipping (Officer Nationality) Regulations 1995, SI 1995/1427, reg 3(c). The fee for the granting by the Secretary of State of an exemption, pursuant to the Merchant Shipping Act 1995 s 48 (power to exempt from manning requirements) (see PARA 491), from the requirements in the Merchant Shipping (Officer Nationality) Regulations 1995, SI 1995/1427, reg 3 relating to a strategic ship is £160: Merchant Shipping (Fees) Regulations 2006, SI 2006/2055, reg 3, Sch 1 Pt 15. As to the North Atlantic Treaty Organisation see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 518.

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496. Certification, training etc relating to officers on sea-going ships and hovercraft personnel.

A master or seaman employed in a sea-going ship registered in the United Kingdom¹, other than a fishing vessel or a pleasure craft², is qualified as an officer³ if he holds a certificate of competency or certificate of equivalent competency, or a certificate treated as equivalent, in one of the following capacities⁴:

- 199 (1) master, chief mate or officer in charge of a navigational watch⁵; or
- 200 (2) chief engineer, second engineer officer or officer in charge of an engineering watch⁶; or
- 201 (3) radio operator⁷.

Provision is made in relation to certificates⁸ and for mandatory requirements to be met in relation to training and qualification⁹.

It is the duty of every owner of a hovercraft¹⁰ to ensure that masters and officers, ratings and other personnel have completed the training specified by the Secretary of State¹¹. Any owner who contravenes this requirement¹² commits an offence¹³.

1 As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 I.e a pleasure craft as defined in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 2 (see PARA 609) and which is less than 80 gross tons or under 24 metres in length: see the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 3(b) (amended by SI 1997/1911); Interpretation Act 1978 s 17(2)(b). The Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, do not apply to certain vessels which have met the stated requirements set out in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771: see PARA 610.

3 I.e for the purposes of the Merchant Shipping Act 1995 s 47 (see PARA 490): see the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 4.

4 See the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 4.

5 See the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 4(a).

6 See the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 4(b).

7 See the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 4(c).

8 As to the recognition of certificates issued by EEA states see the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 5 (substituted by SI 2006/89; amended by SI 2008/2851); as to the recognition of certificates issued by other states see the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 5A (added by SI 2006/89; amended by SI 2008/2851); as to the revalidation of certificates see the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 6; and as to appropriate certificates see reg 7 (amended by SI 2006/89). Special provision is made in relation to certificates to be held by certain ratings forming part of a navigational watch or part of an engine-room watch on certain ships: see the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 8.

As to the form, validity and surrender of certificates see reg 17 (amended by SI 2008/2851); as to the refusal of certificates and appeals against refusal see the Merchant Shipping (Training and Certification) Regulations

1997, SI 1997/348, reg 18 (amended by SI 2008/2851); as to the loss of certificates see the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 19; as to the endorsement of UK certificates see reg 20.

As to certification requirements which the Secretary of State may specify under the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, in respect of the training and certification of masters, officers, ratings and other personnel working on high speed craft registered in the United Kingdom, including hovercraft, see also Merchant Shipping Notice 1740(M) (Training and Certification of Officers and Crew on High Speed Craft).

9 As to the mandatory minimum requirements for the training and qualification of:

824 (1) masters, officers and ratings on tankers see the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 10;

825 (2) masters, officers, ratings and other personnel on ro-ro passenger ships see reg 11 (amended by SI 2000/836);

826 (3) masters, officers, ratings and other personnel on passenger ships other than ro-ro passenger ships and high speed craft, where such ships are engaged on international voyages see the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 11A (added by SI 2000/836); and

827 (4) masters, officers and other personnel on high-speed craft see the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 12.

As to the mandatory minimum requirements for:

828 (a) familiarisation, basic safety training and instruction for all seafarers see reg 13;

829 (b) the issue of certificates of proficiency in survival craft, rescue boats and fast rescue boats see reg 14; and

830 (c) training in advanced fire-fighting see reg 15.

As to the mandatory requirements relating to medical first aid and medical care see regs 9, 16.

As to the training requirements which the Secretary of State may specify under the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, in respect of the training and certification of masters, officers, ratings and other personnel working on High Speed Craft registered in the United Kingdom, including hovercraft, see also Merchant Shipping Notice 1740(M) (Training and Certification of Officers and Crew on High Speed Craft).

10 Ie every sea-going hovercraft registered in the United Kingdom which was constructed on or after 1 January 1996: see the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 22(1).

11 See the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 22(2). It is the duty of any person providing such training to issue documentary evidence to every person successfully completing such training: reg 22(3). In the case of masters, and of officers having an operational role on high-speed craft, the documentary evidence is a certificate in a form specified by the Secretary of State and must be endorsed in a manner specified by the Secretary of State: reg 22(3). In relation to certificates issued under reg 22, reg 17 (form, validity, record and surrender of certificates) (see note 8), reg 18 (refusal of certificates and appeals against refusal) (see note 8) and reg 19 (loss of certificates) (see note 8) apply as they apply to certificates issued under Pt II (regs 3-21): reg 23. However, the Secretary of State may exempt the owner of any hovercraft from any of the requirements of reg 22 subject to such conditions as he may specify, and may alter or cancel any exemption so granted: reg 24. As to the Secretary of State see PARA 38.

12 Ie any owner who contravenes the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 22(2) (see the text and notes 10-11): see reg 22(4).

13 See the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 22(4); and PARA 1130.

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497. Duties of owner and master of United Kingdom ships in relation to certification, training etc.

In relation to United Kingdom ships only¹, every company² must ensure that³:

- 202 (1) every master and seaman assigned to any of its ships holds an appropriate certificate⁴ or a certificate of equivalent competency⁵ in respect of any function he is to perform on that ship⁶;
- 203 (2) every master and seaman on any of its ships has had training specified in the Training and Certification Regulations⁷ in respect of any function he is to perform on that ship⁸; and
- 204 (3) documentation and data relevant to all masters and seamen employed on its ships are maintained and readily available for inspection and include, without being limited to, documentation and data on their experience, training, medical fitness and competency in assigned duties⁹.

However, nothing in heads (1) to (3) above is to prohibit the allocation of tasks for training under supervision or in case of force majeure¹⁰.

The company must provide written instructions to the master of each of its ships setting out the policies and the procedures to be followed¹¹ to ensure that all seamen who are newly employed on board the ship are given a reasonable opportunity to become familiar with the shipboard equipment, operating procedures and other arrangements needed for the proper performance of their duties, before being assigned to those duties¹².

Without prejudice to these requirements¹³, the company and the master must ensure that there are carried at all times on board ship all original certificates and other documents issued pursuant to the Convention on Standards of Training, Certification and Watchkeeping indicating the qualification of any member of the crew to perform functions which they are required to perform aboard ship in the course of their designated duties¹⁴.

Any owner, master, or any member of the crew, of a United Kingdom ship, who contravenes the requirements imposed on him in relation to certification and training commits an offence¹⁵; and, in any case where it is found in relation to a ship that there is any such contravention, the ship may be detained¹⁶.

1 The Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 4 applies only to United Kingdom ships: reg 4(1). See, however, note 14. The Secretary of State may grant, on such terms, if any, as he may specify, exemptions from all or any provisions of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, for classes of cases or individual cases, and may alter or cancel any exemptions so granted: reg 18 (amended by SI 2000/484). As to the Secretary of State see PARA 38.

2 For these purposes, 'company' includes an individual, and in relation to a ship means the owner of the ship or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed on the company by the regulations annexed to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (London, 1 December 1978 to 30 November 1979; TS 50 (1984); Cmnd 9266) (the 'STCW Convention') (as to

which see PARA 8): Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 2(1).

3 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 4(2). As to enforcement of this duty see PARA 1131.

4 For these purposes, 'appropriate certificate' means, in relation to United Kingdom ships, an appropriate certificate as defined in the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348 (see PARA 496) (and in relation to other ships, an appropriate certificate as defined in the STCW Convention): reg 2(1).

5 For these purposes, 'certificate of equivalent competency' means a document entitled 'certificate of equivalent competency' issued under the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 5 (see PARA 496): Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 2(1) (definition added by SI 2000/484).

6 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 4(2)(a) (amended by SI 2000/484).

7 In the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, (see PARA 496): see the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 4(2)(b) (amended by SI 2000/484).

8 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 4(2)(b) (as amended: see note 7).

9 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 4(2)(c) (amended by SI 2000/484).

10 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 4(3).

11 For these purposes, the policies and procedures include:

831 (1) allocation of a reasonable period of time during which each newly employed seaman will have an opportunity to become acquainted with the specific equipment the seaman will be using or operating, and with ship-specific watchkeeping, safety, environmental protection and emergency procedures and arrangements the seafarer needs to know to perform the assigned duties properly (reg 4(5)(a)); and

832 (2) designation of a knowledgeable crew member who will be responsible for ensuring that an opportunity is provided to each newly employed seaman to receive essential information in a language the seaman understands (reg 4(5)(b)).

12 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 4(4). It is the duty of any master and any member of a crew designated with an obligation under reg 4(4) (as to which see note 11) to carry out that obligation: reg 4(6). As to enforcement of this duty see PARA 1131.

13 In without prejudice to the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 4 (see the text and notes 1-12): see reg 14.

14 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 14. A person authorised by the Secretary of State may inspect any ship which is not a United Kingdom ship for the purposes of verifying that the master and all seamen serving on board who are required to be certificated hold valid appropriate certificates (as to which see note 4) (see reg 15(1)(a) (amended by SI 2000/484)); and if an authorised person finds, on inspection, a failure of the master or any seaman, required to hold an appropriate certificate, to have a valid appropriate certificate or a valid exemption from that requirement, he must notify in writing the master of the ship and in the case of a ship registered outside the United Kingdom, the nearest maritime, consular or diplomatic representative of the flag state (Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 15(2), (3)(a) (reg 15(3)(a) amended by SI 2000/484)).

15 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17; and PARA 1131.

16 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 16; and PARA 1131.

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498. Requirement for ships' cooks to be qualified and certificated.

United Kingdom ships¹ of 1,000 gross register tonnage or over, other than pleasure craft or fishing vessels, which go to sea beyond the Near Continental trading area and which carry a crew, the majority of whom are domiciled in the United Kingdom², must carry a qualified and certificated ship's cook³.

1 As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom ship' under the Merchant Shipping Act 1995 see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 As to the rules of domicile and residence generally see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 35 et seq.

3 See the Merchant Shipping (Certification of Ships' Cooks) Regulations 1981, SI 1981/1076, reg 2. The cook to be carried as mentioned in the text must be duly qualified (ie in accordance with reg 4) and be the holder of a certificate of competency duly issued (ie under reg 5) or duly recognised (ie under regs 8, 9). The Secretary of State may specify approved institutions, courses of training, examinations and certificates for these purposes: see reg 3. As to the form and record of a certificate see reg 6; and as to the loss of a certificate see reg 7.

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499. Regulation of masters and crew of vessels sailing in local waters.

Masters of certain classes of United Kingdom and non-United Kingdom ship engaged on voyages in specified local waters¹, and members of the crew of specified classes of local passenger vessels², must be qualified appropriately³.

A person who is serving as master of a specified class of passenger craft operating on inland waterways or on some short coastal voyages⁴ and who is not a person to whom other working time regulations apply⁵ must comply with the self-employed master's working hours code⁶.

1 The Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, Pt 2 (regs 5-26) applies to any person serving as master of a vessel which is a United Kingdom or non-United Kingdom ship of Class IV, V, VI, VI(A), IX(A) or IX(A)(T) (other than a pleasure vessel) and engaged on any voyage in waters of category A, B, C or D, or any voyage to sea within United Kingdom waters in the course of which the vessel is never more than 15 miles (exclusive of waters of category A, B, C or D) from its point of departure or more than 3 miles from land: see reg 7. For these purposes, vessels are classified as follows:

833 (1) vessels which are passenger ships: Class IV (vessels engaged only on voyages in waters of category A, B, C or D); Class V (vessels engaged only on voyages in waters of category A, B or C); Class VI (vessels carrying not more than 250 passengers engaged on voyages to sea or in waters of category A, B, C or D, in favourable weather and during restricted periods, in the course of which the vessels are at no time more than 15 miles, exclusive of waters of category A, B, C or D, from their point of departure or more than 3 miles from land); and Class VI(A) (vessels carrying not more than 50 passengers engaged on voyages over a distance of not more than 6 miles to or from isolated communities on the islands or coast of the United Kingdom and in the course of which they are never more than 3 miles from land) (reg 3(3), Table); and

834 (2) vessels which are not passenger ships: Class IX(A) (vessels other than passenger ships and tankers which do not proceed to sea); Class IX(A)(T) (Tankers which do not proceed to sea) (reg 3(3), Table).

Any reference to waters of a specified category is a reference to waters of that category as specified under or by virtue of the Merchant Shipping (Categorisation of Waters) Regulations 1992, SI 1992/2356, and to waters in the United Kingdom having the characteristics of waters of that category but not specified as such under or by virtue of those Regulations: see the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 3(2). Accordingly, for the purposes of rules or regulations made under the Merchant Shipping Act 1995, 'category A, B, C or D waters' respectively means the waters specified as Category A, B, C or D waters in Merchant Shipping Notice 1776(M): see the Merchant Shipping (Categorisation of Waters) Regulations 1992, SI 1992/2356, reg 3; Interpretation Act 1978 s 17(2)(b). Merchant Shipping Notice 1776(M) (Categorisation of Waters: Notice to Owners, Operators and Masters) (March 2003) is published by the Maritime and Coastguard Agency and it categorises United Kingdom waters which are not regarded as 'sea' for the purposes of Merchant Shipping legislation (excepting marine pollution). As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the Maritime and Coastguard Agency see PARA 56.

The Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, Pt 2 does not apply to a person serving as the master of a certificated small commercial vessel or as the master of a seagoing vessel (other than a pleasure vessel) if he holds an appropriate qualification or certificate: see reg 7.

However, the provisions of the Merchant Shipping Act 1995 ss 47, 48 (see PARAS 490, 491), s 49 (see PARA 1136), s 50 (see PARA 501), and s 52 (see PARA 1140), in so far as they have not already been so extended, and the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, Pt 2, extend to non-United Kingdom ships of Classes IV, V, VI, VI(A),

IX(A) and IX(A)(T) (other than pleasure vessels) and the masters employed in those vessels while they are engaged on any voyage in waters of category A, B, C or D, and any voyage to sea within United Kingdom waters in the course of which the vessel is never more than 15 miles (exclusive of waters of category A, B, C or D) from its point of departure or more than 3 miles from land: see reg 4.

2 The Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224, apply to every United Kingdom vessel which is a passenger ship (being a vessel carrying more than 12 passengers) of a class specified in reg 3(1), Table (which specifies Classes IV, V, VI, VI(A) in identical terms to those used in note 1 head (1)): see reg 3(1).

3 See the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 8; and the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224, regs 4, 5. As to boatmasters' licences see the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, regs 9-14; as to boatmasters' certificates see regs 15-19; as to Rhine Navigation licences see reg 20; as to licensing requirements under local legislation see reg 21; and as to records, the surrender and loss of documents see regs 22-23. As to enforcement see PARA 1135.

4 Is a craft which is either a United Kingdom ship which is a passenger ship of Class IV, V, VI or VI(A), or a hovercraft carrying more than 12 passengers: see the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 28(a).

5 See the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 28(b). The regulations referred to in the text are the Working Time Regulations 1998, SI 1998/1833 (as to which see **EMPLOYMENT** vol 39 (2009) PARA 244 et seq); the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125; and the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049 (as to which see PARA 625): see the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 28(b). As to the working hours of sea-fishermen see the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713; and PARA 626.

6 See the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 29.

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500. Certificates of A.B.

Until a day to be appointed, the following provisions have effect¹.

A seaman² engaged in any United Kingdom ship³ must not be rated as A.B. unless he is the holder of a certificate⁴ of competency granted in pursuance of regulations under these provisions⁵.

The Secretary of State may make regulations providing for the grant of certificates of competency as A.B. for these purposes⁶; and the regulations must direct that no certificate is to be granted to any person unless:

- 205 (1) he has reached such minimum age as may be prescribed⁷;
- 206 (2) he has performed such qualifying service at sea as may be prescribed⁸; and
- 207 (3) he has passed such examination as may be prescribed⁹.

The regulations may make such consequential provisions as appear to the Secretary of State to be necessary or expedient, including provision:

- 208 (a) for the payment of prescribed fees in respect of any application for the grant or replacement of a certificate¹⁰;
- 209 (b) for applying the statutory provisions relating to offences¹¹ to certificates, subject to such adaptations and modifications as may be prescribed¹².

Where provision is made by the law of any Commonwealth country for the grant of certificates of competency as A.B. and the Secretary of State is satisfied that the conditions under which such a certificate is granted require standards of competency not lower than those required for the grant of a certificate under the regulations, Her Majesty may by Order in Council direct that certificates granted in that country are to have the same effect for these purposes as if they had been granted under the regulations; and any such Order may apply to any such certificate any of the provisions of the regulations¹³. Any such Order in Council must be laid before Parliament after being made¹⁴.

Any superintendent¹⁵ or other officer before whom a seaman is engaged in any United Kingdom ship must refuse to enter the man as A.B. on the crew agreement unless the seaman produces a certificate or such other proof that he is the holder of such a certificate as may appear to the superintendent or other officer to be satisfactory¹⁶.

1 The Merchant Shipping Act 1995 s 314(3), Sch 14 para 3 ceases to have effect on such day as the Secretary of State by order appoints: see Sch 14 para 6(1), (2). At the date at which this volume states the law, no such day had been appointed. As to the Secretary of State see PARA 38.

2 As to the meaning of 'seaman' see PARA 424.

3 As to the meaning of 'United Kingdom ship' under the Merchant Shipping Act 1995 see PARA 230.

4 For these purposes, 'certificate' means a certificate of competency under the regulations; and 'regulations' means regulations under the Merchant Shipping Act 1995 Sch 14 para 3: Sch 14 para 3(8).

5 Merchant Shipping Act 1995 Sch 14 para 3(1). See note 1. At the date at which this volume states the law, no such regulations had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Certificates of Competency as AB) Regulations 1970, SI 1970/294 (amended by SI 1996/3243) have effect as if so made.

6 Merchant Shipping Act 1995 Sch 14 para 3(2). See note 1.

7 Merchant Shipping Act 1995 Sch 14 para 3(3)(a). For these purposes, 'prescribed' means prescribed by the regulations: Sch 14 para 3(8). See note 1.

8 Merchant Shipping Act 1995 Sch 14 para 3(3)(b). See note 1.

9 Merchant Shipping Act 1995 Sch 14 para 3(3)(c). See note 1.

10 Merchant Shipping Act 1995 Sch 14 para 3(4)(a). See note 1.

11 In the Merchant Shipping Act 1894 s 104 (revoked): see the Merchant Shipping Act 1995 Sch 14 para 3(4)(b). See note 1.

12 Merchant Shipping Act 1995 Sch 14 para 3(4)(b). See note 1.

13 Merchant Shipping Act 1995 Sch 14 para 3(5). See note 1. At the date at which this volume states the law, no such Orders in Council had been made under Sch 14 para 3(5) but, by virtue of the Interpretation Act 1978 s 17(2)(b), the following Orders have effect as if so made: Merchant Shipping (Certificates of Competency as AB) (New Zealand) Order 1956, SI 1956/1895; the Merchant Shipping (Certificates of Competency as AB) (Barbados) Order 1957, SI 1957/1371; the Merchant Shipping (Certificates of Competency as AB) (Canada) Order 1959, SI 1959/2213; the Merchant Shipping (Certificates of Competency as AB) (Mauritius) Order 1960, SI 1960/1662; the Merchant Shipping (Certificates of Competency as AB) (Trinidad and Tobago) Order 1960, SI 1960/1663; the Merchant Shipping (Certificates of Competency as AB) (Ghana) Order 1963, SI 1963/1316; the Merchant Shipping (Certificates of Competency as AB) (Nigeria) Order 1964, SI 1964/700; the Merchant Shipping (Certificates of Competency as AB) (Gilbert and Ellice Islands Colony) Order 1972, SI 1972/1105; the Merchant Shipping (Certificates of Competency as AB) (Malta) Order 1975, SI 1975/1045; and the Merchant Shipping (Certificates of Competency as AB) (Isle of Man) Order 1986, SI 1986/2220.

14 Merchant Shipping Act 1995 Sch 14 para 3(6). See note 1.

15 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

16 Merchant Shipping Act 1995 Sch 14 para 3(7). See note 1.

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501. Production of certificates and other documents of qualification.

Any person serving or engaged to serve in any ship¹ and holding any certificate or other document which is evidence that he is duly qualified² must on demand produce it to any superintendent³, surveyor of ships⁴ or proper officer⁵ and, if he is not himself the master⁶, to the master of the ship⁷.

If without reasonable excuse a person fails to comply with this requirement⁸, he commits an offence⁹.

1 le any ship to which the Merchant Shipping Act 1995 s 50 applies: see s 50(1). As to the meaning of 'ship' see PARA 229. As to the application of s 50 see PARAS 423, 489. The Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, extends a part of its provisions, and the provisions of the Merchant Shipping Act 1995 s 50, in so far as they have not already been so extended, to specified classes of non-United Kingdom ships which are passenger craft operating on inland waterways or on some short coastal voyages: see PARA 499.

2 le qualified for the purposes of the Merchant Shipping Act 1995 s 47 (see PARA 490): see s 50(1).

3 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

4 As to the meaning of 'surveyor of ships' see PARA 46 note 13. As to the appointment of surveyors see PARA 46.

5 As to the meaning of 'proper officer' see PARA 48 note 11.

6 As to the meaning of 'master' see PARA 424.

7 Merchant Shipping Act 1995 s 50(1). As to the power to grant exemptions with respect to fishing vessels see PARA 425.

8 le fails to comply with the Merchant Shipping Act 1995 s 50(1) (see the text and notes 1-7): see s 50(2).

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 50 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 50 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

9 See the Merchant Shipping Act 1995 s 50(2); and PARA 1138.

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502. Production of certificates and other documents of qualification for crew serving on fishing vessels.

Any person serving or engaged to serve in a United Kingdom fishing vessel¹ and holding any certificate or other document which is evidence that he is duly qualified² must on demand produce it to any person who is a British sea-fishery officer for the purposes of the Sea Fisheries Acts³.

If a person fails without reasonable excuse to produce on demand any such certificate or other document⁴, he commits an offence⁵.

1 As to the meaning of 'fishing vessel' see PARA 230 note 9; and as to the meaning of 'United Kingdom fishing vessel' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to crew agreements relating to fishing vessels see PARA 458.

2 He qualified for the purposes of the Merchant Shipping Act 1995 s 47 (see PARA 490): see s 116(1). As to the Secretary of State's power to grant exemptions see PARA 425.

3 Merchant Shipping Act 1995 s 116(1). For these purposes, 'Sea Fisheries Acts' means any enactment for the time being in force relating to sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout: Merchant Shipping Act 1995 s 116(3). As to who are British sea-fishery officers for the purposes of the Sea Fisheries Acts see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 963.

4 As to the powers of inspectors appointed under the Merchant Shipping Act 1995 s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 116 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 116 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

5 See the Merchant Shipping Act 1995 s 116(2); and PARA 1138.

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(iii) Employment of Young Persons

503. Power to make regulations regarding the employment of young persons on United Kingdom ships.

A person under school-leaving age¹ must not be employed in any United Kingdom ship² except as permitted by regulations³.

The Secretary of State⁴ may make regulations⁵:

- 210 (1) prescribing circumstances in which and conditions subject to which persons under school-leaving age who have attained such age as may be specified in the regulations may be employed in a ship which is not a sea-going United Kingdom ship in such capacities as may be so specified⁶;
- 211 (2) prescribing circumstances and capacities in which persons over school-leaving age but under the age of 18 or under such lower age as may be specified in the regulations must not be employed in a United Kingdom ship which is not a sea-going ship or may be so employed only subject to such conditions as may be specified in the regulations⁷;
- 212 (3) prescribing circumstances and capacities in which persons of at least the age of 16 but under the age of 18 or under such lower age as may be specified in the regulations must not be employed in a sea-going United Kingdom ship or may be so employed only subject to such conditions as may be specified in the regulations⁸.

If any person is employed in a ship in contravention of these provisions, or if any condition subject to which a person may be employed under regulations made for the purposes of these provisions is not complied with, the owner or master is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁹.

1 For these purposes, a person employed in a ship is deemed to be over school-leaving age if he has, and under school-leaving age if he has not, attained the age which is the upper limit of compulsory school age under the enactments relating to education in the part of the United Kingdom in which he entered into the agreement under which he is so employed or, if he entered into that agreement outside the United Kingdom or is employed otherwise than under that agreement, under the enactments relating to education in England and Wales; and, if he is treated for the purposes of those enactments as not having attained that age, he is to be so treated also for the purposes of the Merchant Shipping Act 1995 s 55: s 55(5). As to the meaning of 'ship' see PARA 229. As to the meanings of 'England' and 'Wales' see PARA 17 note 2; and as to the meaning of 'United Kingdom' see PARA 17 note 3. As to compulsory school age see **EDUCATION** vol 15(1) (2006 Reissue) PARA 15.

2 As to the meaning of 'United Kingdom ship' see PARA 230.

3 Merchant Shipping Act 1995 s 55(1) (amended by SI 2002/2125). The text refers to regulations made under the Merchant Shipping Act 1995 s 55 (see the text and notes 4-8): see s 55(1) (as so amended). Section 55(1) is subject to s 55(1A): see s 55(1) (as so amended). Accordingly, a person under 16 years of age must not be employed in any sea-going United Kingdom ship: s 55(1A) (added by SI 2002/2125). As to the application of the Merchant Shipping Act 1995 s 55 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425. The Education Act 1996 s 560 (work experience in last year of compulsory schooling) does not permit the employment of any person contrary to the Merchant Shipping Act 1995 s 55(1): see the Education Act 1996 s 560(3); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 744.

As to the powers of inspectors appointed under the Merchant Shipping Act 1995 s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 55 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 55 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

4 As to the Secretary of State see PARA 38.

5 Merchant Shipping Act 1995 s 55(2). Regulations made for the purposes of s 55 may make different provision for different employments and different descriptions of ship and any other different circumstances: s 55(3). As to the regulations made in exercise of the power under head (2) in the text see the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411 (see PARA 504 et seq). As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41; and as to the Secretary of State's power to make regulations prescribing fees to be charged in respect of the issue or recording of any certificate, licence or other document see PARA 62.

6 Merchant Shipping Act 1995 s 55(2)(a) (amended by SI 2002/2125).

7 Merchant Shipping Act 1995 s 55(2)(b) (amended by SI 2002/2125). See note 5.

8 Merchant Shipping Act 1995 s 55(2)(c) (added by SI 2002/2125).

9 Merchant Shipping Act 1995 s 55(4). As to the meaning of 'standard scale' see PARA 1099. See further PARA 1137.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/5. MASTERS AND SEAMEN/(6) MANNING, QUALIFICATIONS AND TRAINING/(iii) Employment of Young Persons/504. Provisions regarding the employment of young persons on United Kingdom ships.

504. Provisions regarding the employment of young persons on United Kingdom ships.

All of the provisions relating to the employment of young persons¹ on United Kingdom ships² apply to all activities of young persons engaged as workers³ on United Kingdom ships⁴; and certain of those provisions⁵ apply to all activities of young persons engaged as workers on ships other than United Kingdom ships which are in United Kingdom waters⁶. However, in either case, the provisions do not apply to or in relation to:

- 213 (1) the activities of a worker which are covered by the Management of Health and Safety at Work Regulations 1999⁷;
- 214 (2) any work⁸ carried out in circumstances which are unusual and unforeseeable, beyond the employer's control or due to exceptional events⁹, where: (a) that work is of a temporary nature and must be performed immediately¹⁰; and (b) adult workers are not available¹¹; and (c) the young persons affected are allowed equivalent compensatory rest time within the following three weeks¹².

Except where a duty is imposed on any other person, it is the duty of every employer to comply with the provisions relating to the employment of young persons on ships¹³; and, where a person on whom a duty is imposed by any of those provisions does not have control of the matter to which the provision relates because he does not have responsibility for the operation of the ship, then any duty imposed by that provision also extends to any person who has control of that matter¹⁴.

The provisions relating to the employment of young persons on United Kingdom ships also govern:

- 215 (i) the appropriate measures to be taken by the employer to protect young persons at work¹⁵;
- 216 (ii) the specific minimum daily and weekly rest periods which must be provided by the employer¹⁶;
- 217 (iii) the requirement, except in specified circumstances, for young persons to be employed in any capacity on a ship only where an appropriate medical certificate certifies the young person to be fit to be engaged in that capacity¹⁷;
- 218 (iv) records to be kept of the young persons engaged as workers and the inclusion in every crew agreement of a short summary of the regulations governing the employment of young persons on United Kingdom ships¹⁸;
- 219 (v) offences for the contravention of any duty¹⁹, including provision made for corporate and partnership offences²⁰ and for the onus of proving what is reasonably practicable to fall on the defendant²¹;
- 220 (vi) the inspection and detention of United Kingdom ships²² and non-United Kingdom ships²³, including provision made for the enforcement of detention²⁴; and
- 221 (vii) the application of provisions of the Merchant Shipping Act 1995 dealing with arbitration and compensation²⁵.

1 For these purposes, 'young person' means, in relation to employment on a sea-going United Kingdom ship, any person who is of the age of 16 or 17 or, in relation to employment on any other United Kingdom ship, any

person who is under the age of 18 and, in Great Britain, is over school-leaving age for the purposes of the Merchant Shipping Act 1995 s 55 (as to which see PARA 503): Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 2(2) (definition substituted by SI 2002/2125). As to the meaning of 'Great Britain' see PARA 17 note 3. 'United Kingdom ship' means a ship which is a United Kingdom ship within the meaning of the Merchant Shipping Act 1995 s 85(2) (as to which see PARA 591 note 4) or which is a government ship within the meaning of s 308(4) (as to which see PARA 20) or which is a hovercraft registered under the Hovercraft Act 1968 (as to which see PARA 381 et seq): Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 2(2).

2 The provisions of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411: see reg 3(1). These regulations give effect as respects shipping activities in the United Kingdom both to EC Council Directive 94/33 (OJ L216, 20.8.1994, p 12) on the protection of young people at work and in part to The Merchant Shipping (Minimum Standards) Convention 1976 (International Labour Organisation Convention 147) (Cmnd 7183).

3 For these purposes, 'worker' means any person who is employed by an employer under a contract of employment, including trainees and apprentices, where the term 'trainees and apprentices' does not include trainees on a sail training vessel: Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 2(2). 'Employer' means a person by whom a worker is employed under a contract of employment; and 'contract of employment' means a contract of employment, whether express or implied, and if express, whether oral or in writing: reg 2(2). As to the contract of employment generally see **EMPLOYMENT** vol 39 (2009) PARA 1 et seq. 'Sail training vessel' means a vessel which is being used either to provide instruction in the principles of responsibility, resourcefulness, loyalty and team endeavour, and to advance education in the art of seamanship, or to provide instruction in navigation and seamanship for yachtsmen, and is operating under a statutory code, where 'statutory code' means the Code of Practice for the Safety of Small Commercial Sailing Vessels, the Code of Practice for the Safety of Small Commercial Motor Vessels, or the Code of Practice for the Safety of Large Commercial Sailing and Motor Vessels: see reg 2(2).

4 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 3(1).

5 The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, regs 1-3, 14-16 (as to which see heads (vi) and (vii) in the text): see reg 3(2).

6 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 3(2).

7 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 3(3)(a). The text refers to the Management of Health and Safety at Work Regulations 1999, SI 1999/3242 (as to which see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 429 et seq): see the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 3(3)(a).

8 For these purposes, 'work' is to be construed by reference to the meaning of 'working time', which means any period during which the worker is working, at his employer's disposal and carrying out his activity or duties, and any additional period which is to be treated as working time for the purpose of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, under a relevant agreement: reg 2(2). 'Relevant agreement', in relation to a worker, means a workforce agreement which applies to him, any provision of a collective agreement which forms part of a contract between him and his employer, or any other agreement in writing which is legally enforceable as between the worker and his employer: reg 2(2). 'Collective agreement' means a collective agreement within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 s 178 (see **EMPLOYMENT** vol 41 (2009) PARAS 1042-1043), the trade union parties to which are independent trade unions within the meaning of s 5 (see **EMPLOYMENT** vol 40 (2009) PARA 859); and 'workforce agreement' means an agreement between an employer and workers employed by him or their representatives in respect of which the conditions set out in the Working Time Regulations 1998, SI 1998/1833, reg 2(1), Sch 1 (see **EMPLOYMENT** vol 39 (2009) PARA 253) are satisfied: Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 2(2).

9 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 3(3)(b).

10 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 3(3)(b)(i).

11 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 3(3)(b)(ii).

12 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 3(3)(b)(iii). For these purposes, 'week' means a period of seven days starting at midnight on Sunday: reg 2(2).

13 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 4(1). The duty mentioned in the text is to comply with the provisions of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411: see reg 4(1).

14 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 4(2).

15 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 5, Schedule. The text refers to measures to be taken in addition to the general duties required by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962 (as to which see PARA 623): see the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 5. Where the assessment of risk which is required under reg 5 shows the young person's safety or health is at risk (or where the young person will be regularly required to work at night) free health monitoring must be provided: see reg 7.

16 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 6 (amended by SI 2002/2125). For these purposes, 'rest period' means any period which is not working time: Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 2(2). The Company (owner) is required to ensure that the employer meets the obligation set out in head (ii) in the text: see reg 6. 'Company', in relation to a ship to which the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411 apply, means the owner of the ship or any other organisation or person such as the manager, or bareboat charterer, who has assumed the responsibility for operation of the ship from the owner: reg 2(2).

17 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 8 (prospectively amended by SI 2002/3135).

18 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 9. For these purposes, 'crew agreement' means a crew agreement made under the Merchant Shipping Act 1995 s 25 (see PARA 450): Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 2(2).

19 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 10; and PARA 1137.

20 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 11; and PARA 1137.

21 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 12; and PARA 1137.

22 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 13. A relevant inspector may inspect any United Kingdom ship and, if he is satisfied that there has been a failure to comply in relation to that ship with the requirements of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, he may detain the ship until the health and safety of all young persons aboard the ship is secured; but he must not in the exercise of these powers detain or delay the ship unreasonably: see reg 13. For these purposes, 'relevant inspector' means a person mentioned in the Merchant Shipping Act 1995 s 258(1)(a), (b) or (c) (see PARA 48); and 'health and safety' includes the occupational health and safety of persons whilst on board the ship and whilst boarding or leaving the ship: Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 2(2).

23 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 14. A relevant inspector may inspect any ship which is not a United Kingdom ship when the ship is in United Kingdom waters and, if satisfied that the ship does not conform to the standards required of United Kingdom ships by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, he may send a report to the government of the country in which the ship is registered (and a copy thereof to the Director General of the

International Labour Office) and, where conditions on board are clearly hazardous to health and safety, he may take such measures as are necessary to rectify those conditions or he may detain the ship: see reg 14(1). However, such measures (excluding the sending of reports) may be taken only when the ship has called at a United Kingdom port in the normal course of business for operational reasons (see reg 14(2)); and, if the inspector takes measures to rectify conditions or detain the ship, he must forthwith notify the nearest maritime, consular or diplomatic representative of the state whose flag the ship is entitled to fly (see reg 14(3)). The relevant inspector must not in exercise of his powers detain or delay the ship unreasonably: see reg 14(4).

24 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 15. Where a vessel is liable to be detained under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, the Merchant Shipping Act 1995 s 284(1)-(5), (8) (enforcing detention of ships) (see PARA 1253) applies in relation to the ship, subject to modifications: see the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224, reg 15.

25 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 16.

UPDATE

504 Provisions regarding the employment of young persons on United Kingdom ships

NOTE 17--Amendment in force on 16 November 2009: London Gazette, 21 August 2009.

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(iv) Training for Service in Merchant Ships

505. Financial assistance for training.

The Secretary of State¹ may, with the consent of the Treasury², give any person or body of persons of any description determined by him³ financial assistance in respect of expenses incurred or to be incurred by any such person or body in connection with the training (whether in the United Kingdom⁴ or elsewhere) of officers and ratings for service in merchant ships⁵, including expenses incurred or to be incurred by any such person in connection with his undergoing any such training⁶. Such assistance may be given by way of a grant or a loan or otherwise, and, in giving any such assistance, the Secretary of State may impose such conditions as he thinks fit, including conditions requiring a grant to be repaid in specified circumstances⁷.

This power to give financial assistance⁸ is without prejudice to any other power of the Secretary of State to give such assistance in connection with any such training⁹ (whether in the United Kingdom or elsewhere) of officers and ratings for service in merchant ships¹⁰.

In providing such assistance¹¹, the Secretary of State must have regard to the maintenance and development of the United Kingdom's merchant fleet and marine related business¹² and for that purpose he must¹³: (1) keep under review all aspects of that fleet and business¹⁴; and (2) seek the advice of those who appear to him to have experience of that fleet or business¹⁵.

1 As to the Secretary of State see PARA 38.

2 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

3 Ie for the purposes of the Merchant Shipping Act 1995 s 56: see s 56(1).

4 As to the meaning of 'United Kingdom' see PARA 17 note 3.

5 As to the meaning of 'ship' see PARA 229.

6 Merchant Shipping Act 1995 s 56(1). As to the application of s 56 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

7 Merchant Shipping Act 1995 s 56(2).

8 Ie the Merchant Shipping Act 1995 s 56: see s 56(3).

9 Ie any such training as is mentioned in the Merchant Shipping Act 1995 s 56(1): see s 56(3).

10 Merchant Shipping Act 1995 s 56(3).

11 Ie in accordance with the Merchant Shipping Act 1995 s 56: see s 56(4) (s 56(4), (5) added by the Merchant Shipping and Maritime Security Act 1997 s 17).

12 For these purposes, 'marine related business' means any trade, business or other activity concerned with the manufacture of, or the provision of goods and services for, or the operation or use of, ships and includes maritime educational establishments, marine classification societies, marine equipment suppliers, marine surveyors, marine and naval architects, marine insurance companies, protection and indemnity clubs, providers of maritime financial or legal services, the operators of ports and harbours and shipbrokers: Merchant Shipping Act 1995 s 56(5) (as added: see note 11).

- 13 Merchant Shipping Act 1995 s 56(4) (as added: see note 11).
- 14 Merchant Shipping Act 1995 s 56(4)(a) (as added: see note 11).
- 15 Merchant Shipping Act 1995 s 56(4)(b) (as added: see note 11).

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(7) MAINTENANCE OF DISCIPLINE

506. Breaches by seamen of codes of conduct.

As from a day to be appointed, the following provisions have effect¹.

The Secretary of State may make regulations² for the purpose of maintaining discipline on board United Kingdom ships³.

Regulations may provide for the hearing on shore in the United Kingdom, by a disciplinary body⁴, of a complaint by the master⁵ or owner of a United Kingdom ship (other than a fishing vessel⁶) against a seaman⁷ alleging that during his employment on board the ship the seaman contravened⁸ a provision of a code of conduct approved by the Secretary of State⁹. The alleged contravention may be one on or off the ship and in the United Kingdom or elsewhere¹⁰.

Regulations may enable a disciplinary body:

- 222 (1) to dismiss the complaint if it finds the allegation not proved¹¹;
- 223 (2) if it finds the allegation proved, to warn the seaman, to reprimand the seaman or to recommend to the Secretary of State that the seaman is, either for a period specified in the recommendation or permanently, to cease to be entitled to a discharge book¹² and is to be required to surrender any such book which has been issued to him¹³.

Regulations may:

- 224 (a) enable the seaman to appeal against such a recommendation to another disciplinary body (an 'appellate body')¹⁴;
- 225 (b) enable an appellate body to confirm the recommendation, to cancel the recommendation or, in the case of a recommendation that the seaman is to cease to be entitled to a discharge book permanently or for a particular period, to substitute for it a recommendation that he is to cease to be so entitled, instead of permanently, for a period specified in the substituted recommendation or, instead of for the particular period, for a shorter period so specified¹⁵.

Regulations may make provision:

- 226 (i) for securing that a recommendation that the seaman is to permanently cease to be entitled to a discharge book is not submitted to the Secretary of State unless it has been confirmed, either on appeal or otherwise, by an appellate body¹⁶;
- 227 (ii) for the establishment or approval for these purposes of such number of bodies as the Secretary of State thinks fit and with respect to the composition, jurisdiction and procedure of any such body¹⁷;
- 228 (iii) for the payment, out of money provided by Parliament, of such remuneration and allowances as the Secretary of State may, with the consent of the Treasury¹⁸, determine to any member of such a body¹⁹.

Regulations also may²⁰ include provision for any proceedings to take place notwithstanding the absence of the seaman to whom they relate²¹.

However, nothing in the regulations or done in pursuance of the regulations is to be construed as affecting any power to institute, prosecute, entertain or determine proceedings, including criminal proceedings, under any other enactment or at common law²².

In relation to United Kingdom fishing vessels²³, the provisions relating to breaches by seamen of codes of conduct²⁴ have effect with modification²⁵.

1 The Merchant Shipping Act 1995 s 60 does not have effect until the Secretary of State by order appoints a day for s 60 to come into force: s 314(3), Sch 14 para 5(1), (2); and PARA 16 note 1. At the date at which this volume states the law, no such day had been appointed. As to the Secretary of State see PARA 38. As to the application of s 60 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

2 le under the Merchant Shipping Act 1995 s 60(2)-(10) (see the text and notes 4-22): see s 60(1). Regulations may make different provision for different circumstances and may contain such incidental and supplemental provisions as the Secretary of State considers appropriate: s 60(8). See note 1. At the date at which this volume states the law, no such regulations had been made under s 60 and none have effect as if so made. As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.

3 Merchant Shipping Act 1995 s 60(1). See note 1. As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

4 For the purposes of the Merchant Shipping Act 1995 s 60, 'disciplinary body' means a body established or approved by the Secretary of State under s 60(6) (see head (ii) in the text): see s 60(1). As from a day to be appointed, the power to make regulations under s 32 includes power to provide for the determination of certain deductions from wages in respect of employment in fishing vessels by a body established or approved under s 32: see s 111 (not yet in force); and PARA 480.

5 As to the meaning of 'master' see PARA 424.

6 As to the meaning of 'fishing vessel' see PARA 230 note 9. As to the application of the Merchant Shipping Act 1995 s 60 to fishing vessels see further the text and notes 23-25.

7 As to the meaning of 'seaman' see PARA 424.

8 As to the meaning of 'contravention' see PARA 50 note 3.

9 Merchant Shipping Act 1995 s 60(2). The text refers to a code of conduct approved by the Secretary of State for the purposes of s 60: see s 60(2). See note 1.

10 Merchant Shipping Act 1995 s 60(2). See note 1.

11 Merchant Shipping Act 1995 s 60(3)(a). See note 1.

12 le in pursuance of the Merchant Shipping Act 1995 s 80 (see PARA 551): see s 60(3)(b).

13 Merchant Shipping Act 1995 s 60(3)(b). See note 1.

14 Merchant Shipping Act 1995 s 60(4)(a). See note 1.

15 Merchant Shipping Act 1995 s 60(4)(b). See note 1.

16 Merchant Shipping Act 1995 s 60(5). See note 1.

17 Merchant Shipping Act 1995 s 60(6). See note 1.

18 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

19 Merchant Shipping Act 1995 s 60(7). See note 1.

20 le without prejudice to the generality of the Merchant Shipping Act 1995 s 60(1)-(8) (see the text and notes 1-19): see s 60(9).

21 Merchant Shipping Act 1995 s 60(9). See note 1.

22 Merchant Shipping Act 1995 s 60(10). See note 1.

23 As to the meaning of 'United Kingdom fishing vessel' see PARA 230.

24 le the Merchant Shipping Act 1995 s 60 (see the text and notes 1-22): see s 119(2).

25 See the Merchant Shipping Act 1995 s 119(2). The modification is that s 60 has effect with the substitution for s 60(2) (see the text and notes 4-10) of the following: regulations may provide for the hearing on shore in the United Kingdom, by a disciplinary body, of a complaint by the master or owner of such a fishing vessel against a seaman alleging that during his employment in the vessel, the seaman contravened a local industrial agreement relating to his employment on the vessel and for requiring the disciplinary body to have regard to the agreement in determining whether the allegation is proved: see s 60(2) (substituted by s 119(2)). The alleged contravention may be one on or off the ship and in the United Kingdom or elsewhere: see s 60(2) (as so substituted). Regulations under s 60 (see the text and notes 1-22) may include provision authorising persons to determine, for the purposes of s 60 in its application to United Kingdom fishing vessels, what agreements are or were local industrial agreements and which local industrial agreement relates or related to a person's employment in a particular vessel: s 119(3).

The provisions of s 119(2) and s 119(3) do not have effect until the Secretary of State by order appoints a day for s 119(2), (3) to come into force: s 314(3), Sch 14 para 5(1), (2); and PARA 16 note 1. At the date at which this volume states the law, no such order had been made.

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(8) DISQUALIFICATION OF CERTIFICATE HOLDER

507. Disqualification of holder of seaman's certificate other than an officer.

Where it appears to the Secretary of State¹ that a person who is the holder of a certificate of competence² or any certificate issued under the provisions relating to manning³, other than one certifying that a person is qualified as an officer⁴, is unfit to be the holder of such a certificate, whether by reason of incompetence or misconduct or for any other reason, the Secretary of State may give him notice in writing that he is considering the suspension or cancellation of the certificate⁵. The notice must state the reasons why it appears to the Secretary of State that that person is unfit to be the holder of such a certificate and must state that, within a period specified in the notice, or such longer period as the Secretary of State may allow, he may make written representations to the Secretary of State or claim to make oral representations to the Secretary of State⁶. After considering any representations so made, the Secretary of State must decide whether or not to suspend or cancel the certificate and must give the holder of it written notice of his decision⁷.

Where the decision is to suspend or cancel the certificate, the notice must state the date from which the cancellation is to take effect, or the date from which and the period for which the suspension is to take effect, and must require the holder to deliver the certificate to the Secretary of State not later than the date so specified unless before that date the holder has required the case to be dealt with by a statutory inquiry⁸. Where, before the date specified in the notice, he requires the case to be dealt with by such an inquiry, then, unless he withdraws the requirement, the suspension or cancellation does not take effect except as ordered in pursuance of the inquiry⁹.

The Secretary of State may make regulations¹⁰ prescribing the procedure to be followed with respect to the making and consideration of such representations¹¹, the form of any notice to be given and the period to be specified in any such notice as the period within which any steps are to be taken¹².

1 As to the Secretary of State see PARA 38.

2 I.e. a certificate issued under the Merchant Shipping Act 1995 s 54 (see PARA 494): s 62(7). As to the application of s 62 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

3 I.e. any certificate issued under the Merchant Shipping Act 1995 s 47 (see PARA 490): s 62(7).

4 See the Merchant Shipping Act 1995 s 62(1), (7). As to qualification as an officer see PARA 495 et seq.

5 Merchant Shipping Act 1995 s 62(1).

6 Merchant Shipping Act 1995 s 62(2).

7 Merchant Shipping Act 1995 s 62(3).

8 Merchant Shipping Act 1995 s 62(4). The text refers to an inquiry under s 63 (see PARA 517): see s 62(4).

9 Merchant Shipping Act 1995 s 62(5).

10 As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.

11 le in pursuance of the Merchant Shipping Act 1995 s 62: s 62(6).

12 Merchant Shipping Act 1995 s 62(6). In exercise of the power so conferred, the Secretary of State made the Merchant Shipping (Disqualification of Holder of Seaman's Certificates) Regulations 1997, SI 1997/346 (as to which see PARA 508).

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508. Suspension or cancellation of seaman's certificate.

A notice served¹ by the Secretary of State² stating that he is considering the suspension or cancellation of a certificate of competence³ or any certificate or other document issued under the provisions relating to manning⁴, other than one certifying that a person is qualified as an officer⁵, must be given to the holder of the certificate in the prescribed form⁶. Service of such notice must be effected either by serving the holder of the certificate concerned personally or by sending it to him at his last known address by registered post or by the recorded delivery service⁷.

Within six weeks of the receipt of such notice, or such longer period as the Secretary of State may allow, the holder of the certificate may inform the Secretary of State of his intention to make written representations or claim to make oral representations to the Secretary of State⁸. In the case of a claim to make oral representations, the Secretary of State must seek to agree with the holder of the certificate a suitable date and place for the oral representations to be heard and, if no such agreement is reached, they must be heard at the prescribed address⁹ on the last working day of the period for representations so allowed¹⁰. If oral representations are to be made, the holder of the certificate may be accompanied by a friend who may advise him or speak on his behalf¹¹. Representations, whether written or oral, must be made within ten weeks of receipt of the notice¹².

The Secretary of State must give the holder notice of his decision in the prescribed form¹³; and service of that notice must be effected either by serving the holder of the certificate concerned personally or by delivering it to his last known address or by sending it by post to his last known address¹⁴.

1 Ie pursuant to the Merchant Shipping Act 1995 s 62(1) (see PARA 507): see the Merchant Shipping (Disqualification of Holder of Seaman's Certificates) Regulations 1997, SI 1997/346, reg 3(1).

2 As to the Secretary of State see PARA 38.

3 Ie a certificate issued under the Merchant Shipping Act 1995 s 54 (see PARA 494): see the Merchant Shipping (Disqualification of Holder of Seaman's Certificates) Regulations 1997, SI 1997/346, regs 1(2), 2, 3(1).

4 Ie any certificate or other document issued under the Merchant Shipping Act 1995 s 47 (see PARA 490): see the Merchant Shipping (Disqualification of Holder of Seaman's Certificates) Regulations 1997, SI 1997/346, regs 1(2), 2, 3(1).

5 See the Merchant Shipping (Disqualification of Holder of Seaman's Certificates) Regulations 1997, SI 1997/346, regs 2, 3(1). As to qualification as an officer see PARA 495 et seq.

6 Merchant Shipping (Disqualification of Holder of Seaman's Certificates) Regulations 1997, SI 1997/346, regs 1(2), 3(1). For the prescribed form of certificate see reg 3(1), Sch 1 (Notice of Intention to suspend or cancel certificate).

7 Merchant Shipping (Disqualification of Holder of Seaman's Certificates) Regulations 1997, SI 1997/346, reg 3(2).

8 Merchant Shipping (Disqualification of Holder of Seaman's Certificates) Regulations 1997, SI 1997/346, reg 4(1).

9 Ie the address given in the Merchant Shipping (Disqualification of Holder of Seaman's Certificates) Regulations 1997, SI 1997/346, Sch 1 (see note 6): see reg 4(2).

10 Merchant Shipping (Disqualification of Holder of Seaman's Certificates) Regulations 1997, SI 1997/346, reg 4(2).

11 Merchant Shipping (Disqualification of Holder of Seaman's Certificates) Regulations 1997, SI 1997/346, reg 4(3).

12 Merchant Shipping (Disqualification of Holder of Seaman's Certificates) Regulations 1997, SI 1997/346, reg 4(4).

13 Merchant Shipping (Disqualification of Holder of Seaman's Certificates) Regulations 1997, SI 1997/346, reg 5(1). For the prescribed form of notice see reg 5(1), Sch 2 (Notice of Decision concerning suspension or cancellation of certificate).

14 Merchant Shipping (Disqualification of Holder of Seaman's Certificates) Regulations 1997, SI 1997/346, reg 5(2).

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(9) INQUIRIES INTO FITNESS OR CONDUCT OF OFFICERS AND SEAMEN

(i) In general

509. Rules as to inquiries and appeals.

The Secretary of State¹ may make rules for the conduct of inquiries into the fitness or conduct of officers², or of seamen other than officers³, and for the conduct of any rehearing from such inquiries⁴ which is not held by the High Court⁵. Such rules may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected⁶.

Rules of court made for the purpose of rehearings which are held by the High Court, or of appeals to the High Court, may require the court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a rehearing or hear such an appeal with the assistance of one or more assessors⁷.

1 As to the Secretary of State see PARA 38.

2 Ie under the Merchant Shipping Act 1995 s 61 (see PARA 511): s 65(1). As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41. As to qualification as an officer see PARA 495 et seq.

3 Ie under the Merchant Shipping Act 1995 s 63 (see PARA 517): s 65(1). As to the meaning of 'seaman' see PARA 424.

4 Ie under the Merchant Shipping Act 1995 s 64 (see PARA 523): s 65(1).

5 Merchant Shipping Act 1995 s 65(1). In exercise of the power so conferred by s 65, the Secretary of State has made the Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347 (see PARA 518 et seq) and, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752 (see PARA 512 et seq) and the Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001 (see PARA 857 et seq) have effect as if so made. As to the application of the Merchant Shipping Act 1995 s 65 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

6 Merchant Shipping Act 1995 s 65(2). This provision is expressed to be without prejudice to the generality of s 65(1) (see the text and notes 1-5): see s 65(2).

7 Merchant Shipping Act 1995 s 65(3). As to the role of nautical assessors generally see PARA 205.

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510. Power to summon witnesses before inquiries into fitness or conduct.

The persons holding an inquiry into the fitness or conduct of an officer¹, or of a seaman other than an officer², may³:

- 229 (1) by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry⁴; and
- 230 (2) take evidence on oath (and for that purpose administer oaths) or, instead of administering an oath, require the person examined to make a solemn affirmation⁵.

If, on the failure of a person to attend such an inquiry in answer to such a summons⁶:

- 231 (a) the persons holding the inquiry are satisfied by evidence on oath that the person in question is likely to be able to give material evidence or produce any document which relates to any matter in question at the inquiry, that he has been duly served with the summons and that a reasonable sum has been paid or tendered to him for costs and expenses⁷; and
- 232 (b) it appears to them that there is no just excuse for the failure⁸,

they may issue a warrant to arrest him and bring him before the inquiry at a time and place specified in the warrant⁹.

If any person attending or brought before such an inquiry refuses without just excuse to be sworn or give evidence, or to produce any document, the persons holding the inquiry may¹⁰:

- 233 (i) commit him to custody until the end of such period not exceeding one month as may be specified in the warrant or until he gives evidence or produces the document, whichever occurs first¹¹; or
- 234 (ii) impose on him a fine not exceeding £1,000¹²,

or both¹³.

1 Ie under the Merchant Shipping Act 1995 s 61 (see PARA 511): s 68(1). As to qualification as an officer see PARA 495 et seq.

2 Ie under the Merchant Shipping Act 1995 s 63 (see PARA 517): s 68(1). As to the meaning of 'seaman' see PARA 424.

3 Merchant Shipping Act 1995 s 68(1). As to the application of s 68 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

4 Merchant Shipping Act 1995 s 68(1)(a).

5 Merchant Shipping Act 1995 s 68(1)(b).

6 Merchant Shipping Act 1995 s 68(2).

7 Merchant Shipping Act 1995 s 68(2)(a).

8 Merchant Shipping Act 1995 s 68(2)(b).

9 Merchant Shipping Act 1995 s 68(2).

10 Merchant Shipping Act 1995 s 68(3).

11 Merchant Shipping Act 1995 s 68(3)(a).

12 Merchant Shipping Act 1995 s 68(3)(b). A fine imposed under s 68(3)(b) is to be treated for the purpose of its collection, enforcement and remission as having been imposed by the magistrates' court for the area in which the inquiry in question was held; and the persons holding the inquiry must, as soon as practicable after imposing the fine, give particulars of it to the proper officer of that court: s 68(4) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 para 174(1), (2)). For this purpose, 'proper officer' means, in relation to a magistrates' court in England and Wales, the designated officer for the court: see the Merchant Shipping Act 1995 s 68(4A) (added by the Access to Justice Act 1999 Sch 13 para 174(1), (3); amended by the Courts Act 2003 s 109(1), Sch 8 para 366). As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

13 Merchant Shipping Act 1995 s 68(3).

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(ii) Inquiries as to the Fitness or Conduct of Officers

A. IN GENERAL

511. Inquiry into fitness or conduct of officer.

If it appears to the Secretary of State¹ that an officer²:

- 235 (1) is unfit to discharge his duties, whether by reason of incompetence or misconduct or for any other reason³; or
- 236 (2) has been seriously negligent in the discharge of his duties⁴; or
- 237 (3) has failed to comply with his duty to assist another ship⁵ in case of collision⁶,

the Secretary of State may cause an inquiry to be held by one or more persons appointed by him and, if he does so, may, if he thinks fit, suspend, pending the outcome of the inquiry, any certificate issued to the officer under the manning provisions⁷ and require the officer to deliver it to him⁸. Where a certificate issued to an officer has been suspended in this way⁹, the suspension may, on the application of the officer, be terminated by the High Court, and the decision of the court on such an application is final¹⁰.

Any such inquiry¹¹ must be conducted in accordance with the inquiry rules¹²; and those rules must require the persons holding the inquiry to hold it with the assistance of one or more assessors¹³.

The persons holding such an inquiry¹⁴ into the fitness or conduct of an officer¹⁵:

- 238 (a) may, if satisfied of any of the matters mentioned in heads (1) to (3) above, cancel or suspend any certificate issued to him¹⁶ or censure him¹⁷;
- 239 (b) may make such order with regard to costs of the inquiry as they think just¹⁸; and
- 240 (c) must make a report on the case to the Secretary of State¹⁹;

and, if the certificate is cancelled or suspended, the officer, unless he has delivered it to the Secretary of State²⁰, must deliver it forthwith to the persons holding the inquiry or to the Secretary of State²¹.

1 As to the Secretary of State see PARA 38.

2 Merchant Shipping Act 1995 s 61(1). As to qualification as an officer see PARA 495 et seq. As to the application of s 61 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

3 Merchant Shipping Act 1995 s 61(1)(a).

4 Merchant Shipping Act 1995 s 61(1)(b).

5 As to the meaning of 'ship' see PARA 229.

6 Merchant Shipping Act 1995 s 61(1)(c). Head (3) in the text refers to a failure to comply with the provisions
of s 92 (see PARA 756): see s 61(1)(c).

7 le in pursuance of the Merchant Shipping Act 1995 s 47 (see PARA 490): s 61(1).

8 Merchant Shipping Act 1995 s 61(1).

9 le under the Merchant Shipping Act 1995 s 61(1) (see the text and notes 1-8): see s 61(2).

10 Merchant Shipping Act 1995 s 61(2).

11 le any inquiry under the Merchant Shipping Act 1995 s 61: see s 61(3).

12 le rules made under the Merchant Shipping Act 1995 s 65(1) (see PARA 509): see s 61(3).

13 Merchant Shipping Act 1995 s 61(3). As to the role of nautical assessors generally see PARA 205.

14 le an inquiry under the Merchant Shipping Act 1995 s 61: see s 61(4).

15 Merchant Shipping Act 1995 s 61(4).

16 le issued to him under the Merchant Shipping Act 1995 s 47 (see PARA 490): s 61(4)(a).

17 Merchant Shipping Act 1995 s 61(4)(a).

18 Merchant Shipping Act 1995 s 61(4)(b). Any costs which a person is ordered to pay under s 61(4)(b) may
be recovered from him by the Secretary of State: s 61(5).

19 Merchant Shipping Act 1995 s 61(4)(c).

20 le in pursuance of the Merchant Shipping Act 1995 s 61(1) (see the text and notes 1-8): see s 61(4).

21 Merchant Shipping Act 1995 s 61(4).

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B. PROCEDURE

512. Notice of inquiry into fitness or conduct of officer.

When the Secretary of State¹ causes an inquiry into the fitness or conduct of an officer² to be held, he must cause a notice (a 'notice of inquiry') to be served on the officer concerned, who must be made a party to the inquiry³. Service of such a notice must be effected at least 30 days⁴ before the date fixed for the inquiry either by serving the officer concerned personally or by sending the notice to his last known address by registered post or by the recorded delivery service⁵.

The notice of inquiry must state: (1) the facts giving rise to the inquiry⁶; (2) the allegation⁷ made against the officer to whom the notice is addressed and the grounds therefor⁸; (3) the time and date when and the place where the inquiry is to be held⁹; (4) the officer's rights¹⁰ at the inquiry¹¹.

¹ As to the Secretary of State see PARA 38.

² I.e. an inquiry under the Merchant Shipping Act 1995 s 61 (see PARA 511): see the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, rr 2(1), 4(1); Interpretation Act 1978 s 17(2)(b). For these purposes, 'officer' means an officer qualified for the purposes of the Merchant Shipping Act 1995 s 47 (see PARA 490) and includes a master, skipper, mate, second hand, deck officer, marine engineer officer, radio officer and doctor: Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1); Interpretation Act 1978 s 17(2)(b). As to qualification as an officer see PARA 495 et seq.

The Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 4(1) refers to a 'section 52 inquiry', which is defined as an inquiry into the fitness or conduct of an officer under the Merchant Shipping Act 1970 s 52 (repealed): see the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1). As to the Merchant Shipping Act 1970 s 52 (repealed) see now the Merchant Shipping Act 1995 s 61; and PARA 511.

³ Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 4(1).

⁴ For these purposes, any period of time specified by reference to days is exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday, Christmas Day, Good Friday or any day appointed by law to be a bank holiday in that part of the United Kingdom where the inquiry is to be held, in which case the time is to be reckoned exclusively of that day also: Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(2). As to the meaning of 'United Kingdom' see PARA 17 note 3.

⁵ Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 4(1).

⁶ Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 4(2)(a).

⁷ For these purposes, 'allegation' means an allegation by the Secretary of State that an officer's fitness or conduct falls within the Merchant Shipping Act 1995 s 61(1)(a)-(c) (see PARA 511): Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1); Interpretation Act 1978 s 17(2)(b).

⁸ Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 4(2)(b).

⁹ Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 4(2)(c).

¹⁰ I.e. his rights as set out in the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 7(2), (3) (see PARA 515): see r 4(2).

- 11 Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 4(2).

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513. Appointment of court of inquiry into fitness or conduct of officer.

The person appointed¹ to hold an inquiry into the fitness or conduct of an officer² must conduct it with the assistance of one or more assessors who must be appointed by the Lord Chancellor³.

Wherever possible, at least one of the assessors appointed must have had experience in the same capacity and in the same type of ship as the officer concerned⁴. However, a person may not be appointed after the day on which he attains the age of 70 to assist with such an inquiry as an assessor⁵.

1 For these purposes, 'person appointed' means the person or persons appointed by the Secretary of State to hold an inquiry under the Merchant Shipping Act 1995 s 61 (see PARA 511): Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1); Interpretation Act 1978 s 17(2)(b).

The Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1) refers to a 'section 52 inquiry', which is defined as an inquiry into the fitness or conduct of an officer under the Merchant Shipping Act 1970 s 52 (repealed): see the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1). As to the Merchant Shipping Act 1970 s 52 (repealed) see now the Merchant Shipping Act 1995 s 61; and PARA 511.

2 In an inquiry under the Merchant Shipping Act 1995 s 61 (see PARA 511): see the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, rr 2(1), 5(1); Interpretation Act 1978 s 17(2)(b). As to the meaning of 'officer' for these purposes see PARA 512 note 2.

3 Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 5(1). As to the role of nautical assessors generally see PARA 205. As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq.

4 Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 5(3).

5 Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 5(4) (added by the Judicial Pensions and Retirement Act 1993 s 26(10), Sch 6 para 62).

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514. Holding of inquiry into fitness or conduct of officer.

At the time and the place appointed for holding an inquiry into the fitness or conduct of an officer¹, the person appointed² may proceed with the inquiry whether the party upon whom the notice of inquiry³ was served, any other party, any person who has applied to become a party, or any of them, are present or not; but, where the officer concerned has been served with the notice of inquiry by post, the person appointed must not proceed with the inquiry in his absence unless satisfied that the officer has been duly served⁴.

Any other person, not being the officer concerned, may, with the leave of the person appointed, become a party to the inquiry⁵.

The inquiry must be held in public save to the extent to which the person appointed is properly satisfied that in the interests of justice, or for other good and sufficient reason in the public interest, any part of the evidence or any argument relating thereto should be heard in private⁶.

¹ See an inquiry under the Merchant Shipping Act 1995 s 61 (see PARA 511): see the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1); Interpretation Act 1978 s 17(2)(b). As to the meaning of 'officer' for these purposes see PARA 512 note 2.

The Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1) refers to a 'section 52 inquiry', which is defined as an inquiry into the fitness or conduct of an officer under the Merchant Shipping Act 1970 s 52 (repealed): see the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1). As to the Merchant Shipping Act 1970 s 52 (repealed) see now the Merchant Shipping Act 1995 s 61; and PARA 511.

² As to the meaning of 'person appointed' see PARA 513 note 1.

³ As to the meaning of 'notice of inquiry' see PARA 512.

⁴ Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 6(1). The text refers to an officer who has been served in accordance with the requirements of r 4(1) (see PARA 512): see r 6(1).

⁵ Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 6(2).

⁶ Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 6(3).

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515. Procedure at inquiry into fitness or conduct of officer.

The proceedings at an inquiry into the fitness or conduct of an officer¹ must commence with the presentation of behalf of the Secretary of State² of the case against the officer concerned³.

The officer concerned has the right:

- 241 (1) to defend himself against the allegation⁴, in person or otherwise⁵;
- 242 (2) to admit, before or at any time after the commencement of the inquiry, the allegation or any part of it made against him⁶.

Where more than one allegation is made against an officer, his admission of an allegation or any part of it pursuant to head (2) above is without prejudice to his right to defend himself against any other allegation which he does not admit⁷.

Any party to the inquiry has the right in person or by a representative to make an opening statement, call witnesses⁸, cross-examine witnesses called by other parties, tender evidence other than oral evidence and address the person appointed in such order as the person appointed⁹ may direct¹⁰. If a party does not appear in person at the inquiry and is not represented by another person, he may make representations in writing to the person appointed and such written representations must be read out at the inquiry by or on behalf of the person appointed¹¹.

Without prejudice to the admission of documents as secondary evidence allowed by statute or otherwise, affidavits, depositions, statutory declarations and other written evidence must, unless the person appointed considers it unjust, be accepted as evidence at the inquiry¹².

The person appointed may postpone or adjourn the hearing of the inquiry for such period as he thinks fit either of his own motion or upon the application of any party¹³.

1. Is an inquiry under the Merchant Shipping Act 1995 s 61 (see PARA 511): see the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1); Interpretation Act 1978 s 17(2)(b). As to the meaning of 'officer' for these purposes see PARA 512 note 2.

The Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1) refers to a 'section 52 inquiry', which is defined as an inquiry into the fitness or conduct of an officer under the Merchant Shipping Act 1970 s 52 (repealed): see the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1). As to the Merchant Shipping Act 1970 s 52 (repealed) see now the Merchant Shipping Act 1995 s 61; and PARA 511.

2. As to the Secretary of State see PARA 38.

3. Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 7(1).

4. As to the meaning of 'allegation' see PARA 512 note 7.

5. Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 7(2)(a)(i).

6. Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 7(2)(a)(ii).

7. Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 7(2)(b).

- 8 As to the power of the person holding an inquiry to summon witnesses see PARA 510.
- 9 As to the meaning of 'person appointed' see PARA 513 note 1.
- 10 Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 7(3).
- 11 Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 7(3).
- 12 Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 7(4).
- 13 Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 7(5).

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516. Decision of inquiry into fitness or conduct of officer.

The person appointed¹ must, at the conclusion of an inquiry into the fitness or conduct of an officer² or as soon as possible thereafter, announce his decision in public and make a report on the case³ to the Secretary of State⁴. Each assessor⁵ must either sign the report with or without reservations, or state in writing his dissent therefrom and his reasons for such dissent; and such reservations or dissent and reasons, if any, must be forwarded to the Secretary of State with the report⁶.

The Secretary of State must inform the officer concerned, in writing, of the decision of the person appointed if the officer was not in court when that decision was announced and must make a copy of the report available to him⁷.

A copy of the report must be made available to any party to the inquiry upon request to the Secretary of State⁸.

1 As to the meaning of 'person appointed' see PARA 513 note 1.

2 I.e. an inquiry under the Merchant Shipping Act 1995 s 61 (see PARA 511): see the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1); Interpretation Act 1978 s 17(2)(b). As to the meaning of 'officer' for these purposes see PARA 512 note 2.

The Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1) refers to a 'section 52 inquiry', which is defined as an inquiry into the fitness or conduct of an officer under the Merchant Shipping Act 1970 s 52 (repealed): see the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 2(1). As to the Merchant Shipping Act 1970 s 52 (repealed) see now the Merchant Shipping Act 1995 s 61; and PARA 511.

3 I.e. pursuant to the Merchant Shipping Act 1995 s 61(4)(c) (see PARA 511): see the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 8; Interpretation Act 1978 s 17(2)(b). As to the Secretary of State see PARA 38.

4 Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 8; Interpretation Act 1978 s 17(2)(b).

5 As to the appointment of assessors to inquiries as to fitness or conduct see PARA 513. As to the role of nautical assessors generally see PARA 205.

6 Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 8.

7 Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 8.

8 Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 8.

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(iii) Inquiries as to the Fitness or Conduct of Seamen other than Officers

A. IN GENERAL

517. Inquiry into fitness or conduct of seaman other than officer.

Where a person has, before the due date¹, required his case to be dealt with by an inquiry into the fitness or conduct of a seaman² other than an officer³, the Secretary of State⁴ must cause an inquiry to be held by one or more persons appointed by him⁵.

Any such inquiry must be conducted in accordance with inquiry rules made by the Secretary of State⁶; and those rules must require the persons holding the inquiry to hold it with the assistance of one or more assessors⁷.

The persons holding any such inquiry:

- 243 (1) may confirm the decision of the Secretary of State and cancel or suspend the certificate accordingly⁸;
- 244 (2) may, where the decision was to cancel the certificate, suspend it instead⁹;
- 245 (3) may, where the decision was to suspend the certificate, suspend it for a different period¹⁰;
- 246 (4) may, instead of confirming the decision of the Secretary of State, censure the holder of the certificate or take no further action¹¹;
- 247 (5) may make such order with regard to the costs of the inquiry as they think just¹²; and
- 248 (6) must make a report on the case to the Secretary of State¹³;

and, if the certificate is cancelled or suspended, it must be delivered forthwith to the persons holding the inquiry or to the Secretary of State¹⁴.

1 le before the date mentioned in the Merchant Shipping Act 1995 s 62(4) (see PARA 507), being the date from which the cancellation of a certificate issued under s 54 (see PARA 494), or of any certificate issued under s 47 (see PARA 490), is to take effect, or the date from which and the period for which the suspension of such a certificate is to take effect: see s 63(1).

2 As to the meaning of 'seaman' see PARA 424.

3 le an inquiry under the Merchant Shipping Act 1995 s 63 (see PARA 517): s 63(1). As to qualification as an officer see PARA 495 et seq. As to the application of s 63 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

4 As to the Secretary of State see PARA 38.

5 Merchant Shipping Act 1995 s 63(1).

6 le in accordance with rules made under the Merchant Shipping Act 1995 s 65(1) (see PARA 509): see s 63(2). As to the rules so made see PARA 518 et seq.

- 7 Merchant Shipping Act 1995 s 63(2). As to the role of nautical assessors generally see PARA 205.
- 8 Merchant Shipping Act 1995 s 63(3)(a).
- 9 Merchant Shipping Act 1995 s 63(3)(b).
- 10 Merchant Shipping Act 1995 s 63(3)(c).
- 11 Merchant Shipping Act 1995 s 63(3)(d).
- 12 Merchant Shipping Act 1995 s 63(3)(e). Any costs which a person is ordered to pay under s 63(3)(e) may be recovered from him by the Secretary of State: s 63(4).
- 13 Merchant Shipping Act 1995 s 63(3)(f).
- 14 Merchant Shipping Act 1995 s 63(3).

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B. PROCEDURE

518. Notice of inquiry into the fitness or conduct of a seaman other than an officer.

Where the Secretary of State¹ causes an inquiry into the fitness or conduct of a seaman other than an officer² to be held, he must cause a notice (a 'notice of inquiry') to be served in writing on the certificate holder³ concerned who must be made a party to the inquiry⁴. Service of such a notice must be effected at least 30 days⁵ before the date fixed for the inquiry either by serving the certificate holder concerned personally or by sending the notice to his last known address by registered post or by the recorded delivery service⁶.

The notice of inquiry must state: (1) the facts giving rise to the inquiry⁷; (2) the allegation⁸ made against the certificate holder to whom the notice is addressed and the grounds therefor⁹; (3) the time and date when, and the place where, the inquiry is to be held¹⁰; (4) the certificate holder's rights¹¹ at the inquiry¹².

1 As to the Secretary of State see PARA 38.

2 For these purposes, 'inquiry' means any inquiry, and any rehearing of such an inquiry, to which the Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, apply (r 2(1)); and the Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, apply to any inquiry under the Merchant Shipping Act 1995 s 63 (see PARA 517), and to any rehearing of such an inquiry under s 64 (see PARA 523) which is not held by the High Court (Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 3).

3 For these purposes, 'certificate holder' means the holder of a certificate of competency issued under either the Merchant Shipping Act 1995 s 47 (see PARA 490) (other than one certifying that a person is qualified as an officer) or s 54 (see PARA 494): Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 2(1). As to qualification as an officer see PARA 495 et seq.

4 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 4(1).

5 Any period specified in the Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, by reference to days is exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday, Christmas Day, Good Friday or any day appointed by law to be a bank holiday in the part of the United Kingdom where the inquiry is to be held, in which case the time must be reckoned exclusively of that day also: r 2(2). As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 4(2).

7 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 4(3)(a).

8 For these purposes, 'allegation' means an allegation by the Secretary of State that a certificate holder is unfit to be the holder of such a certificate, whether by reason of incompetence or misconduct or for any other reason, within the meaning of the Merchant Shipping Act 1995 s 62(1) (see PARA 507); Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 2(1).

9 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 4(3)(b).

10 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 4(3)(c).

11 I.e. the rights as set out in the Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 7(2), (3) (see PARA 521): see r 4(3)(d).

12 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 4(3)(d).

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519. Appointment of court of inquiry into the fitness or conduct of a seaman other than an officer.

The person appointed¹ to hold an inquiry² into the fitness or conduct of a seaman other than an officer must conduct it with the assistance of one or more assessors who must be appointed by the Lord Chancellor³. An assessor must be suitably qualified to assess the competence of a seaman to discharge the duties and responsibilities commensurate with his certificate⁴.

1 For these purposes, 'person appointed' means the person or persons appointed by the Secretary of State to hold an inquiry under the Merchant Shipping Act 1995 s 63 (see PARA 517): Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 2(1). As to the Secretary of State see PARA 38.

2 As to the meaning of 'inquiry' for these purposes see PARA 518 note 2.

3 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 5(1). As to the role of nautical assessors generally see PARA 205. As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq.

4 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 5(2).

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520. Holding of inquiry into the fitness or conduct of a seaman other than an officer.

At the time and place appointed for holding an inquiry¹ into the fitness or conduct of a seaman other than an officer, the person appointed² may proceed with the inquiry in the absence of the certificate holder³ upon whom the notice of inquiry⁴ was served, any other party, or any person who has applied to become a party, or any of them⁵. Where, however, the certificate holder concerned has been served with the notice of inquiry by post, the person appointed must not proceed with the inquiry in his absence unless satisfied that the certificate holder has been duly served⁶.

Any other person, not being the certificate holder concerned, may, with the leave of the person appointed, become a party to the inquiry⁷.

The inquiry must be held in public except to the extent to which the person appointed is satisfied that in the interests of justice, or for other good and sufficient reason in the public interest, any part of the evidence or any argument relating thereto should be heard in private⁸.

1 As to the meaning of 'inquiry' for these purposes see PARA 518 note 2.

2 As to the meaning of 'person appointed' see PARA 519 note 1.

3 As to the meaning of 'certificate holder' for these purposes see PARA 518 note 3.

4 As to the meaning of 'notice of inquiry' see PARA 518.

5 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 6(1).

6 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 6(1) proviso. The text refers to a certificate holder who has been served in accordance with the requirements of r 4(1), (2) (see PARA 518): see r 6(1) proviso.

7 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 6(2).

8 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 6(3).

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521. Procedure at inquiry into the fitness or conduct of a seaman other than an officer; decision.

The proceedings at an inquiry¹ into the fitness or conduct of a seaman other than an officer must commence with the presentation on behalf of the Secretary of State² of the case against the certificate holder³ concerned⁴.

The certificate holder has the right:

- 249 (1) to defend himself against the allegation⁵, in person or otherwise⁶;
- 250 (2) to admit before or at any time after the commencement of the inquiry the allegation or any part of it⁷.

Where more than one allegation is made against a certificate holder, his admission of an allegation or any part of it pursuant to head (2) above is without prejudice to his right to defend himself against any other allegation which he does not admit⁸.

Any party to the inquiry has the right in person or by a representative to make an opening statement, call witnesses⁹, cross-examine witnesses called by other parties or on behalf of the Secretary of State, tender evidence other than oral evidence and address the person appointed¹⁰ in such order as the person appointed may direct¹¹.

If a party does not appear in person at the inquiry and is not represented by another person, he may make representations in writing to the person appointed and such written representations must be read out at the inquiry by or on behalf of the person appointed¹².

Without prejudice to the admission of documents as secondary evidence allowed by statute or otherwise, affidavits, depositions, statutory declarations and other written evidence must, unless the person appointed considers it unjust, be accepted as evidence at the inquiry¹³.

The person appointed may postpone or adjourn the hearing of the inquiry for such period as he thinks fit either of his own motion or upon the application of any party¹⁴.

1 As to the meaning of 'inquiry' for these purposes see PARA 518 note 2.

2 As to the Secretary of State see PARA 38.

3 As to the meaning of 'certificate holder' for these purposes see PARA 518 note 3.

4 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 7(1).

5 As to the meaning of 'allegation' see PARA 518 note 8.

6 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 7(2)(a)(i).

7 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 7(2)(a)(ii).

8 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 7(2)(b).

9 As to the power to summon witnesses see PARA 510.

- 10 As to the meaning of 'person appointed' see PARA 519 note 1.
- 11 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 7(3).
- 12 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, reg 7(4).
- 13 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, reg 7(5).
- 14 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, reg 7(6).

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522. Decision of inquiry into the fitness or conduct of a seaman other than an officer.

The person appointed¹ must, at the conclusion of an inquiry² into the fitness or conduct of a seaman other than an officer, or as soon as possible thereafter, announce his decision in public³.

Each assessor⁴ must either sign the report with or without reservations, or state in writing his dissent therefrom and his reasons for such dissent, and any such reservations or dissent and reasons must be forwarded to the Secretary of State⁵ with the report⁶.

The Secretary of State must inform the certificate holder⁷ concerned, in writing, of the decision of the person appointed if the certificate holder was not present when that decision was announced and make a copy of the report available to him⁸.

A copy of the report must be made available to any party to the inquiry upon request to the Secretary of State⁹.

- 1 As to the meaning of 'person appointed' see PARA 519 note 1.
- 2 As to the meaning of 'inquiry' for these purposes see PARA 518 note 2.
- 3 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, reg 8(1).
- 4 As to the appointment of assessors for these purposes see PARA 519.
- 5 As to the Secretary of State see PARA 38.
- 6 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, reg 8(2).
- 7 As to the meaning of 'certificate holder' for these purposes see PARA 518 note 3.
- 8 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, reg 8(3).
- 9 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, reg 8(4).

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(iv) Rehearings and Appeals

523. Rehearing of and appeal from inquiries into fitness or conduct.

Where an inquiry has been held into the fitness or conduct either of officers¹, or of seamen other than officers², the Secretary of State³ may order the whole or part of the case to be reheard⁴; and he must do so:

- 251 (1) if new and important evidence which could not be produced at the inquiry has been discovered⁵; or
- 252 (2) if there appear to the Secretary of State to be other grounds for suspecting that a miscarriage of justice may have occurred⁶.

Such an order may provide for the rehearing to be by the persons who held it, by a wreck commissioner⁷ or by the High Court⁸.

Any rehearing which is not held by the High Court must be conducted in accordance with the statutory rules⁹.

Where the persons holding the inquiry have decided to cancel or suspend the certificate of any person or have found any person at fault, then, if no application for an order¹⁰ has been made, or if such an application has been refused, that person or any other person who, having an interest in the inquiry, has appeared at the hearing and is affected by the decision or finding may appeal to the High Court¹¹.

1 Ie under the Merchant Shipping Act 1995 s 61 (see PARA 511): s 64(1). As to qualification as an officer see PARA 495 et seq.

2 Ie under the Merchant Shipping Act 1995 s 63 (see PARA 517): s 64(1). As to the meaning of 'seaman' see PARA 424.

3 As to the Secretary of State see PARA 38.

4 Merchant Shipping Act 1995 s 64(1). As to the application of s 64 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

5 Merchant Shipping Act 1995 s 64(1)(a).

6 Merchant Shipping Act 1995 s 64(1)(b).

7 As to the appointment of wreck commissioners see PARA 58.

8 Merchant Shipping Act 1995 s 64(2).

9 Merchant Shipping Act 1995 s 64(3). The text refers to rules made under s 65(1) (see PARA 509): see s 64(3).

10 Ie under the Merchant Shipping Act 1995 s 64(1) (see the text and notes 1-6): see s 64(4).

11 Merchant Shipping Act 1995 s 64(4).

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524. Procedure on rehearing of inquiry into fitness or conduct.

Any rehearing of an inquiry into fitness or conduct of an officer¹ which is not held by the High Court must be conducted in accordance with the relevant statutory rules that are applied for the purpose².

Any rehearing of an inquiry into fitness or conduct of a seaman other than an officer³ which is not held by the High Court must be conducted in accordance with the relevant statutory rules that apply for that purpose⁴.

1 le an inquiry under the Merchant Shipping Act 1995 s 61 (see PARA 511): see the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 9; Interpretation Act 1978 s 17(2)(b).

2 Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, r 9; Interpretation Act 1978 s 17(2)(b). The text refers to the provisions of the Merchant Shipping (Section 52 Inquiries) Rules 1982, SI 1982/1752, rr 4-8 (see PARAS 512-516): see r 9.

3 le under the Merchant Shipping Act 1995 s 63 (see PARA 517): see the Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 3.

4 Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347, r 3. The text refers to the provisions of the Merchant Shipping (Section 63 Inquiries) Rules 1997, SI 1997/347 (see PARAS 518-522): see r 3. See also PARA 518 note 2.

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(v) Cancelled or Suspended Seaman's Certificate

525. Failure to deliver cancelled or suspended seaman's certificate.

If a person fails to deliver a cancelled or suspended seaman's certificate as required¹, he commits an offence².

¹ See as required under the Merchant Shipping Act 1995 s 61 (see PARA 511), s 62 (see PARA 507) or s 63 (see PARA 517): see s 66.

² See the Merchant Shipping Act 1995 s 66; and PARA 1142. As to the application of s 66 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

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526. Power to restore seaman's certificate.

Where a seaman's certificate has been cancelled or suspended¹, the Secretary of State², if of the opinion that the justice of the case requires it, may reissue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate³.

1 le under the Merchant Shipping Act 1995 s 61 (see PARA 511), s 62 (see PARA 507) or s 63 (see PARA 517): see s 67.

2 As to the Secretary of State see PARA 38.

3 Merchant Shipping Act 1995 s 67. As to the application of s 67 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

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(10) RELIEF AND REPATRIATION OF SEAMEN

527. Relief and return of seaman etc left behind and shipwrecked.

Where:

- 253 (1) a person employed as a seaman¹ in a United Kingdom ship² is left behind in any country outside the United Kingdom³ or is taken to such a country on being shipwrecked⁴; or
- 254 (2) a person who became so employed under an agreement entered into outside the United Kingdom is left behind in the United Kingdom or is taken to the United Kingdom on being shipwrecked⁵,

the persons who last employed him as a seaman must make such provision for his return and for his relief and maintenance⁶ until his return and such other provisions as may be required by regulations made by the Secretary of State⁷. The provisions to be so made may include the repayment of expenses incurred in bringing a shipwrecked seaman ashore and maintaining him until he is brought ashore and the payment of the expenses of the burial or cremation of a seaman who dies before he can be returned⁸.

The Secretary of State may also make regulations providing for the manner in which any wages⁹ due to any person left behind or taken to any country¹⁰, and any property of his left on board ship, are to be dealt with¹¹.

The Secretary of State may make regulations requiring a superintendent¹² or proper officer¹³:

- 255 (a) to make such provision as may be prescribed by the regulations with respect to any matter for which provision may be required to be made by regulations relating to seaman and others left behind and shipwrecked¹⁴; and
- 256 (b) to make the like provision with respect to persons who are British citizens¹⁵, British overseas territories citizens¹⁶ or British Overseas citizens¹⁷ and are found in distress in any country outside the United Kingdom after being employed in ships registered in, or belonging to the government of, such a country¹⁸.

Without prejudice to the generality of the above provisions, regulations so made may make provision:

- 257 (i) for determining the place to which a person is to be returned¹⁹;
- 258 (ii) for requiring the master of any United Kingdom ship to convey a person to a place determined in accordance with the regulations and for enabling a superintendent or proper officer to give the master directions for that purpose²⁰;
- 259 (iii) for the making of payments in respect of the conveyance of a person in accordance with the regulations²¹; and
- 260 (iv) for the keeping of records and the rendering of accounts²².

Regulations so made may make a contravention²³ of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale²⁴ or such less amount as may be specified in the regulations²⁵.

1 As to the meaning of 'seaman' see PARA 424.

2 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

3 For the purposes of the Merchant Shipping Act 1995 Pt III (ss 24-84) (see PARA 423 et seq), a seaman discharged from a ship in any country and left there is deemed to be left behind in that country notwithstanding that the ship also remains there (s 84(4)); and a seaman is discharged from a ship when his employment in that ship is terminated (s 84(3)). Section 73 applies:

835 (1) to a person left behind on being discharged in pursuance of s 29 (see PARA 463) (ie when a ship ceases to be registered in the United Kingdom) whether or not at the time he is left behind the ship is still a United Kingdom ship (s 73(7)); and

836 (2) to the master of a ship as it applies to a seaman; and s 74 (limit of employer's liability under s 73) (see PARA 528) and s 75 (recovery of expenses incurred for relief and return etc) (see PARA 529) have effect accordingly (s 73(8)).

As to the meaning of 'master' see PARA 424. As to the application of s 73 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

4 Merchant Shipping Act 1995 s 73(1)(a).

5 Merchant Shipping Act 1995 s 73(1)(b). See note 3.

6 For these purposes, 'relief and maintenance' includes the provision of surgical or medical treatment and such dental and optical treatment, including the repair or replacement of any appliance, as cannot be postponed without impairing efficiency: Merchant Shipping Act 1995 s 84(1).

7 Merchant Shipping Act 1995 s 73(1). As to the Secretary of State see PARA 38. As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41. At the date at which this volume states the law, no regulations had been made under s 73(1) but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Repatriation) Regulations 1979, SI 1979/97 and the Merchant Shipping (Increased Penalties) Regulations 1979, SI 1979/1519 (an amending provision), have effect as if so made. The Merchant Shipping (Repatriation) Regulations 1979, SI 1979/97 make provision in relation to:

837 (1) the application of the provisions (see reg 2);

838 (2) the return and relief of seamen left behind or shipwrecked (see reg 3 (amended by SI 1979/1519));

839 (3) other matters relating to seamen left behind and shipwrecked seamen (see the Merchant Shipping (Repatriation) Regulations 1979, SI 1979/97, regs 4, 5 (both amended by SI 1979/1519));

840 (4) the place for return (see the Merchant Shipping (Repatriation) Regulations 1979, SI 1979/97, reg 6);

841 (5) a seaman's return, relief and maintenance by superintendents and proper officers (see reg 7);

842 (6) conveyance orders and directions (see regs 8-10 (regs 8, 9 amended by SI 1979/1519));

843 (7) wages of seamen employed in ships who are left behind (see the Merchant Shipping (Repatriation) Regulations 1979, SI 1979/97, reg 11 (amended by SI 1979/1519));

844 (8) wages of seamen employed in fishing vessels who are left behind (see the Merchant Shipping (Repatriation) Regulations 1979, SI 1979/97, regs 12-14 (reg 12 amended by SI 1979/1519));

845 (9) other records and accounts (see the Merchant Shipping (Repatriation) Regulations 1979, SI 1979/97, reg 15 (amended by SI 1979/1519));

846 (10) the property of seamen left behind and of shipwrecked seamen (see the Merchant Shipping (Repatriation) Regulations 1979, SI 1979/97, reg 16 (amended by SI 1979/1519)); and

847 (11) official log book entries (see the Merchant Shipping (Repatriation) Regulations 1979, SI 1979/97, reg 17).

The provisions of regs 11-14 (see heads (7), (8)) also apply to any seaman who became employed in a ship registered in the United Kingdom under an agreement entered into in the United Kingdom and who leaves his ship in the United Kingdom, otherwise than on being discharged therefrom: see reg 2(2). See also PARA 469.

8 Merchant Shipping Act 1995 s 73(2).

9 As to the meaning of 'wages' see PARA 464 note 6.

10 As mentioned in the Merchant Shipping Act 1995 s 73(1) (see the text and notes 1-7): see s 73(3).

11 Merchant Shipping Act 1995 s 73(3). As to the regulations having effect as if so made see note 7.

12 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

13 As to the meaning of 'proper officer' see PARA 48 note 11.

14 Merchant Shipping Act 1995 s 73(4)(a). The text refers to regulations made under s 73(1)-(3) (see the text and notes 1-11): s 73(4)(a). As to the regulations having effect as if so made see note 7.

15 As to the meaning of 'British citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq.

16 As to the meaning of 'British overseas territories citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 44-57.

17 As to the meaning of 'British Overseas citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 58 et seq.

18 Merchant Shipping Act 1995 s 73(4)(b) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). As to the regulations having effect as if so made see note 7.

19 Merchant Shipping Act 1995 s 73(5)(a). As to the regulations having effect as if so made see note 7.

20 Merchant Shipping Act 1995 s 73(5)(b). As to the regulations having effect as if so made see note 7. As to offences see PARA 1202.

21 Merchant Shipping Act 1995 s 73(5)(c). As to the regulations having effect as if so made see note 7.

22 Merchant Shipping Act 1995 s 73(5)(d). As to the regulations having effect as if so made see note 7.

23 As to the meaning of 'contravention' see PARA 50 note 3.

24 As to the meaning of 'standard scale' see PARA 1099.

25 Merchant Shipping Act 1995 s 73(6). As to the regulations having effect as if so made see note 7.

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528. Limit of employer's liability with regard to seaman etc left behind and shipwrecked.

Where a person left behind in or taken to any country¹ remains there after the end of a period of three months, the persons who last employed him as a seaman² are not liable³ to make provision for his return or for any matter arising after the end of that period, unless they have before the end of that period been under an obligation imposed on them by regulations made by the Secretary of State⁴ to make provision with respect to him⁵.

1 Ie as mentioned in the Merchant Shipping Act 1995 s 73(1) (see PARA 527): see s 74.

2 As to the meaning of 'seaman' see PARA 424. The Merchant Shipping Act 1995 s 73 (see PARA 527) applies to the master of a ship as it applies to a seaman and s 74 has effect accordingly: s 73(8). As to the meaning of 'master' see PARA 424; and as to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229. As to the application of s 74 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

3 Ie under the Merchant Shipping Act 1995 s 73 (see PARA 527): see s 74.

4 Ie regulations made under the Merchant Shipping Act 1995 s 73 (see PARA 527): see s 74. As to the Secretary of State see PARA 38.

5 Merchant Shipping Act 1995 s 74.

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529. Recovery of expenses incurred for relief and return of seaman etc left behind and shipwrecked.

Where any expenses are incurred in respect of any matter for which the employers of a seaman¹ left behind and shipwrecked are required to make provision², then:

- 261 (1) if the expenses are incurred by the Secretary of State³ (or are incurred by the government of any country outside the United Kingdom⁴ and repaid to them on behalf of the Crown) the Secretary of State may recover them from the employers⁵;
- 262 (2) if the expenses are incurred by the seaman, he may recover them from the employers unless they prove either that under the terms of his employment they were to be borne by him or that he would not have been left behind but for his own wrongful act or neglect⁶.

Where, in the case of any seaman, expenses are incurred by the Secretary of State or are incurred by the government of any country outside the United Kingdom and repaid to them on behalf of the Crown:

- 263 (a) in respect of any matter for which⁷ the seaman's last employers would otherwise⁸ have been required to make provision⁹; or
- 264 (b) in respect of any matter for which provision is required to be made¹⁰ with respect to persons who are British citizens¹¹, British overseas territories citizens¹² or British Overseas citizens¹³ and are found in distress in any country outside the United Kingdom after being employed in ships registered in, or belonging to the government of, such a country¹⁴,

the Secretary of State may recover them from the seaman, or, if he has died, from his personal representatives¹⁵.

1 As to the meaning of 'seaman' see PARA 424.

2 I.e. under the Merchant Shipping Act 1995 s 73 (see PARA 527): see s 75(1). Section 73 (see PARA 527) applies to the master of a ship as it applies to a seaman and s 75 has effect accordingly: s 73(8). As to the meaning of 'master' see PARA 424; and as to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229. As to the application of s 75 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

3 As to the Secretary of State see PARA 38.

4 As to the meaning of 'United Kingdom' see PARA 17 note 3.

5 Merchant Shipping Act 1995 s 75(1)(a).

6 Merchant Shipping Act 1995 s 75(1)(b).

7 I.e. but for the Merchant Shipping Act 1995 s 74 (limit of employer's liability under s 73) (see PARA 528): see s 75(2)(a).

8 I.e. under the Merchant Shipping Act 1995 s 73 (see PARA 527): see s 75(2)(a).

9 Merchant Shipping Act 1995 s 75(2)(a).

10 le under the Merchant Shipping Act 1995 s 73(4)(b) (see PARA 527): see s 75(2)(b).

11 As to the meaning of 'British citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq.

12 As to the meaning of 'British overseas territories citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 44-57.

13 As to the meaning of 'British Overseas citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 58 et seq.

14 Merchant Shipping Act 1995 s 75(2)(b).

15 Merchant Shipping Act 1995 s 75(2).

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530. Financial assistance in respect of crew relief costs.

The Secretary of State¹ may, with the consent of the Treasury², give financial assistance to³:

- 265 (1) the owner of a ship⁴ registered⁵ in the British Islands⁶; or
- 266 (2) any manager of a ship so registered, being either an individual ordinarily resident in the British Islands⁷ or a body corporate which is incorporated in the British Islands and has its principal place of business there⁸,

in respect of travel and other costs incurred by the owner or manager in connection with members of the ship's crew⁹ joining or leaving the ship outside the limited European trading area¹⁰.

If the Secretary of State so determines, eligibility for such assistance¹¹ is conditional on the fulfilment of such conditions with respect to all or any of the following matters as are specified in his determination¹²:

- 267 (a) the nationality of any person in relation to whom any such costs as are mentioned above are incurred¹³;
- 268 (b) the ordinary residence of any such person¹⁴;
- 269 (c) the place, outside the limited European trading area, where any such person joins or leaves his ship¹⁵.

Such assistance¹⁶ may be given by way of a grant or loan or otherwise; and, in giving any such assistance, the Secretary of State may impose such conditions as he thinks fit¹⁷.

1 As to the Secretary of State see PARA 38.

2 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

3 Merchant Shipping Act 1995 s 76(1). As to the application of s 76 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

4 As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229.

5 As to the meaning of 'registered' for these purposes see PARA 254 note 2.

6 Merchant Shipping Act 1995 s 76(1)(a). As to the meaning of 'British Islands' see **STATUTES** vol 44(1) (Reissue) PARA 1383.

7 As to ordinary residence see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 134; **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 58.

8 Merchant Shipping Act 1995 s 76(1)(b).

9 For these purposes, the crew of a ship is to be taken to include the master and other officers of the ship: Merchant Shipping Act 1995 s 76(4)(a). As to the meaning of 'master' see PARA 424.

10 Merchant Shipping Act 1995 s 76(1). For these purposes, 'limited European trading area' has the same meaning as it has for the purposes of any regulations under s 47 (see PARA 490): s 76(4)(b).

11 le financial assistance under the Merchant Shipping Act 1995 s 76: see s 76(2).

12 Merchant Shipping Act 1995 s 76(2).

13 Merchant Shipping Act 1995 s 76(2)(a). The text refers to any such costs as are mentioned in s 76(1) (see the text and notes 1-10): see s 76(2)(a).

14 Merchant Shipping Act 1995 s 76(2)(b).

15 Merchant Shipping Act 1995 s 76(2)(c).

16 le financial assistance under the Merchant Shipping Act 1995 s 76: see s 76(3).

17 Merchant Shipping Act 1995 s 76(3).

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(11) REQUIRED DOCUMENTATION

(i) Official Log Books

531. Keeping official log books.

An official log book in a form approved by the Secretary of State¹ must² be kept in every United Kingdom ship³.

If a person intentionally destroys or mutilates or renders illegible any entry in an official log book, he commits an offence⁴.

¹ As to the Secretary of State see PARA 38.

² Ie except as provided by regulations under the Merchant Shipping Act 1995 s 77 (see PARA 532): see s 77(1).

³ Merchant Shipping Act 1995 s 77(1). As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3. As to the application of s 77 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

The official log book of any ship kept under the Merchant Shipping Act 1995 s 77 and, without prejudice to s 288(2) (see PARA 1110), any document purporting to be a copy of an entry therein and to be certified as a true copy by the master of the ship, are admissible in evidence and, when in the custody of the Registrar General of Shipping and Seamen, are open to public inspection: see s 287(1)(b); and PARA 1109. As to the Registrar General of Shipping and Seamen see PARA 61.

⁴ See the Merchant Shipping Act 1995 s 77(6); and PARA 1143.

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532. Power to make regulations in relation to official log books.

The Secretary of State¹ may make regulations² prescribing the particulars to be entered in official log books³, the persons by whom such entries are to be made, signed or witnessed, and the procedure to be followed in the making of such entries and in their amendment or cancellation⁴.

The regulations may require the production or delivery of official log books to such persons, in such circumstances and within such times as may be specified therein⁵.

Regulations so made may exempt ships⁶ of any description from any requirements thereof, either generally or in such circumstances as may be specified in the regulations⁷; and they may make a contravention⁸ of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 2 on the standard scale⁹ or not exceeding a lesser amount¹⁰.

1 As to the Secretary of State see PARA 38.

2 As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.

3 As to the requirement to keep official log books see PARA 531.

4 Merchant Shipping Act 1995 s 77(2). As to the application of the Merchant Shipping Act 1995 s 77 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425. In exercise of the powers conferred by s 77, the Secretary of State has made the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473 (an amending provision for these purposes). However, by virtue of the Interpretation Act 1978 s 17(2)(b), the following regulations have effect as if made under the Merchant Shipping Act 1995 s 77: the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919 (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARAS 1025, 1026); the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220 (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1023); the Merchant Shipping (Repatriation) Regulations 1979, SI 1979/97 (see PARAS 469, 527); the Merchant Shipping (Increased Penalties) Regulations 1979, SI 1979/1519 (an amending provision); the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569 (see PARA 533); the Merchant Shipping (Official Log Books) (Fishing Vessels) Regulations 1981, SI 1981/570 (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1030); and the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144 (see PARA 536 et seq).

5 Merchant Shipping Act 1995 s 77(3).

6 As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229.

7 Merchant Shipping Act 1995 s 77(4).

8 As to the meaning of 'contravention' see PARA 50 note 3.

9 As to the meaning of 'standard scale' see PARA 1099.

10 Merchant Shipping Act 1995 s 77(5).

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533. Entries in official log books.

The following provision is made¹ in relation to the maintenance of official log books²:

- 270 (1) exemptions from the statutory requirements to keep official log books³;
- 271 (2) entries to be made in official log books⁴;
- 272 (3) making, signing and witnessing entries⁵;
- 273 (4) annexes to official log books⁶;
- 274 (5) making false, inaccurate or incomplete entries⁷;
- 275 (6) the time for making entries⁸;
- 276 (7) the amendment and cancellation of entries⁹;
- 277 (8) production on demand of the official log book¹⁰;
- 278 (9) delivery of the official log book¹¹; and
- 279 (10) offences¹².

¹ See the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569, which, by virtue of the Interpretation Act 1978 s 17(2)(b), have effect as if made under the Merchant Shipping Act 1995 s 77 (see PARA 532).

² As to official log books see PARAS 531, 532.

³ See the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569, reg 2; Interpretation Act 1978 s 17(2)(b). The text refers to the requirements of the Merchant Shipping Act 1995 s 77 (see PARA 532): see the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569, reg 2; Interpretation Act 1978 s 17(2)(b).

⁴ See the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569, reg 3 (added by SI 1991/2145), the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569, Schedule (amended by SI 1991/2145; SI 1997/1511; SI 2002/1473).

⁵ See the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569, regs 4, 5, Schedule (Schedule as amended: see note 4).

⁶ See the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569, reg 6.

⁷ See the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569, reg 6A (added by SI 1991/2145).

⁸ See the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569, reg 7.

⁹ See the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569, reg 8.

¹⁰ See the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569, reg 9 (amended by SI 1991/2145; SI 1997/2971).

¹¹ See the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569, reg 10 (amended by SI 1991/2145).

¹² See the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569, reg 11 (amended by SI 1991/2145).

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(ii) Lists of Crew

534. List of crew to be maintained.

The master¹ of every United Kingdom ship² must³ make and maintain a list of the crew containing such particulars as may be required by the regulations⁴.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Ie except as provided by regulations under the Merchant Shipping Act 1995 s 78 (see PARA 535): see s 78(1).

4 Merchant Shipping Act 1995 s 78(1). As to the regulations mentioned in the text see note 3. As to the application of s 78 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

Lists of crews made under s 78 and notices given under Pt III (ss 24-84) of additions to or changes in lists of crews, are admissible in evidence and, when in the custody of the Registrar General of Shipping and Seamen, are open to public inspection: see s 287(1)(c); and PARA 1109. As to the Registrar General of Shipping and Seamen see PARA 61.

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535. Power to make regulations in relation to list of crew.

The Secretary of State¹ may make regulations²:

- 280 (1) specifying the particulars to be entered in a list of the crew³;
- 281 (2) limiting the time for which a list of the crew may remain in force⁴;
- 282 (3) providing for the maintenance by such persons and either in such place as may be specified in the regulations or, if it is so specified, in the ship⁵, of a copy or copies of each list of a crew, and for the notification to such persons of any changes therein⁶;
- 283 (4) for the production of a list of the crew to such persons, in such circumstances and within such time as may be specified in the regulations⁷; and
- 284 (5) for the delivery to a superintendent⁸ or proper officer⁹ or the Registrar General of Shipping and Seamen¹⁰, in such circumstances as may be specified in the regulations, of a list of the crew or a copy thereof maintained under the regulations and for the notification to him of any changes in such a list¹¹.

Such regulations may:

- 285 (a) enable a list of the crew to be contained in the same document as a crew agreement¹² and may treat any particulars entered in the crew agreement as forming part of the particulars entered in the list¹³;
- 286 (b) exempt from the requirements of the regulations such descriptions of ship as may be specified in the regulations and may make different provisions for different circumstances¹⁴;
- 287 (c) make a contravention¹⁵ of any provision of the regulations an offence punishable on summary conviction with a fine not exceeding level 2 on the standard scale¹⁶ or not exceeding a lesser amount¹⁷.

1 As to the Secretary of State see PARA 38.

2 Merchant Shipping Act 1995 s 78(2). At the date at which this volume states the law, no such regulations had been made under s 78 but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919 (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARAS 1025, 1026), the Merchant Shipping (Increased Penalties) Regulations 1979, SI 1979/1519 (an amending provision), and the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144 (as to which see PARA 536 et seq), have effect as if so made. As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41. As to the application of s 78 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

3 Merchant Shipping Act 1995 s 78(2)(a). As to the requirement to keep a list of the crew see PARA 534.

4 Merchant Shipping Act 1995 s 78(2)(b).

5 As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229.

6 Merchant Shipping Act 1995 s 78(2)(c).

- 7 Merchant Shipping Act 1995 s 78(2)(d).
- 8 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.
- 9 As to the meaning of 'proper officer' see PARA 48 note 11.
- 10 As to the Registrar General of Shipping and Seamen see PARA 61.
- 11 Merchant Shipping Act 1995 s 78(2)(e).
- 12 As to the meaning of 'crew agreement' see PARA 450.
- 13 Merchant Shipping Act 1995 s 78(3).
- 14 Merchant Shipping Act 1995 s 78(4).
- 15 As to the meaning of 'contravention' see PARA 50 note 3.
- 16 As to the meaning of 'standard scale' see PARA 1099.
- 17 Merchant Shipping Act 1995 s 78(5).

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536. Exemptions to make and maintain list of the crew.

The duty¹ to make and maintain a list of the crew does not apply in relation to a pleasure yacht which is²: (1) engaged on a coastal voyage³; or (2) engaged on any other voyage, provided that not more than four members of the crew receive wages for their employment⁴.

1 The duty imposed by the Merchant Shipping Act 1995 s 78 (see PARA 534): see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 12; Interpretation Act 1978 s 17(2)(b).

2 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 12; Interpretation Act 1978 s 17(2)(b).

3 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 12(a). As to the meaning of 'coastal voyage' for these purposes see PARA 452 note 6.

4 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 12(b). In Pt II (regs 11-22), except where the context otherwise requires, references to the employment of a seaman in a ship include references to engagement; and 'seaman' includes the master of a ship: reg 11. As to the meaning of 'ship' for these purposes see PARA 452 note 2.

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537. List of crew contained in crew agreement.

A list of crew may be contained in the same document as a crew agreement¹ relating to one ship² only and any particulars entered in the crew agreement are to be treated as forming part of the particulars entered in the list³.

1 As to crew agreements see PARA 450.

2 As to the meaning of 'ship' for these purposes see PARA 452 note 2.

3 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 13.

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538. Particulars to be specified in list of crew.

A list of crew must¹ contain the following particulars²:

- 288 (1) the name of the ship³, its port of registry and official number⁴;
- 289 (2) the name of the owner of the ship and his address and of any other person registered as manager or ship's husband⁵;
- 290 (3) the number of the certificate evidencing an exemption granted by the Secretary of State⁶ from the requirements of the provisions relating to crew agreements⁷ with respect to the ship or any person in it⁸; and
- 291 (4) with respect to every seaman⁹ from time to time on board the ship, whether or not he is employed¹⁰ under a crew agreement¹¹:
- 29 (a) his name¹²;
- 63. (b) his address¹³;
- 64. (c) the number of his current discharge book¹⁴, if any, or the date and place of his birth¹⁵;
- 65. (d) the name of the ship in which he was last employed, and, if he was discharged¹⁶ from that ship more than 12 months before he became employed in the ship to which the crew list relates, the year in which he was so discharged¹⁷;
- 66. (e) the capacity in which he is employed in the ship¹⁸;
- 67. (f) the grade, including any command, service or other endorsement¹⁹, and number of any certificate of competency or of service held by him²⁰;
- 68. (g) the date on which he went on board the ship to commence his employment in it²¹;
- 69. (h) the date on and place at which he left the ship and, if he left on discharge, the reason for his discharge²²;
- 70. (i) if he is left behind otherwise than on discharge, the date and place of and the reason, if known to the master, for this being done²³; and
- 71. (j) the name and relationship of his next of kin and the address of his next of kin, if different from that of the seaman²⁴.

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A list of crew which relates to a ship belonging to a general lighthouse authority²⁵ need contain only the particulars referred to in heads (1), (4)(a), (4)(b), (4)(g) and (4)(h) above²⁶.

A list of crew which relates to seamen employed under a crew agreement need contain only the particulars referred to in head (1) above and, in respect of each seaman, the particulars referred to in heads (4)(a), (4)(b), (4)(c), (4)(e), (4)(g) and (4)(h) above if the remaining particulars referred to in heads (1) to (4) above are contained in the crew agreement²⁷.

With respect to a member of the naval, military or air forces of the Crown or of any service administered by the Defence Council²⁸ when acting as such a member, a list of crew need contain only the particulars referred to in heads (4)(a), (4)(b), (4)(g) and (4)(h) above²⁹.

- 1 le subject to the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(2), (3) (see the text and notes 25-27): see reg 14(1). As to the requirement to keep a list of the crew see PARA 534.
- 2 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1).
- 3 As to the meaning of 'ship' for these purposes see PARA 452 note 2. As to a ship's name for registration purposes see PARA 277 et seq.
- 4 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1)(a)(i). As to the registration of ships under the Merchant Shipping Act 1995 see PARA 245 et seq; and as to the allocation of an official number see PARA 279 et seq.
- 5 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1)(a)(ii).
- 6 As to the Secretary of State see PARA 38.
- 7 le an exemption granted by the Secretary of State from the requirements of the Merchant Shipping Act 1995 s 25 (see PARA 450): see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(a)(iii); Interpretation Act 1978 s 17(2)(b). As to crew agreements see PARA 450.
- 8 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1)(a)(iii); Interpretation Act 1978 s 17(2)(b).
- 9 le subject to the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(4) (see the text and notes 28-29): see reg 14(1)(b). As to the meaning of 'seaman' for these purposes see PARA 536 note 4.
- 10 As to the meaning of references to the employment of a seaman in a ship see PARA 536 note 4.
- 11 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1)(b).
- 12 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1)(b)(i).
- 13 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1)(b)(ii).
- 14 As to discharge books see PARA 551 et seq.
- 15 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1)(b)(iii).
- 16 For these purposes, except where the context otherwise requires, references to discharge include references to termination of engagement: Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 11.
- 17 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1)(b)(iv).
- 18 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1)(b)(v).
- 19 For these purposes, 'endorsement', in relation to a certificate of competency or of service means an endorsement in respect of a trading area, type of ship or dangerous cargo: Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 11. As to certificates of competency issued under the Merchant Shipping Act 1995 see PARA 490.
- 20 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1)(b)(vi).
- 21 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1)(b)(vii).

- 22 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1)(b)(viii).
- 23 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1)(b)(ix).
- 24 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(1)(b)(x).
- 25 As to General Lighthouse Authorities see PARA 1068.
- 26 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(2).
- 27 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(3).
- 28 As to the Defence Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 443 et seq.
- 29 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 14(4).

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539. Duties with regard to copies of list of crew.

A copy of every list of crew¹, including all changes in it notified to the owner², must be maintained by the owner of the ship at an address in the United Kingdom³; and a person who fails to do so commits an offence⁴.

The master must, as soon as practicable and in any event within three days of any change being made in the list of crew, notify the change to the owner of the ship⁵; and a master who fails to do so commits an offence⁶.

When any person having in his possession the copy of a list of crew⁷ has reason to believe that the ship to which it relates has been lost or abandoned, he must immediately deliver the copy of the list to a superintendent⁸. A person who fails to do so commits an offence⁹.

A person having in his possession a copy of a list of crew¹⁰ must produce it on demand to a superintendent¹¹; and a person who fails to do so commits an offence¹².

1 As to the requirement to keep a list of the crew see PARA 534.

2 For these purposes, 'owner of the ship' means either the person registered as managing owner, ship's husband or manager, or (if there is no such person) the owner of the ship: Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 15(3). As to the meaning of 'ship' for these purposes see PARA 452 note 2.

3 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 15(1). As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(2); and PARA 1144.

5 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 15(2).

6 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(1); and PARA 1144.

7 The which is required to be maintained under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 15 (see the text and notes 1-3, 5): see reg 16.

8 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 16.

9 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(2); and PARA 1144.

10 The which is required to be maintained under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 15 (see the text and notes 1-3, 5): see reg 17.

11 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 17.

12 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(2); and PARA 1144.

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540. Delivery on demand of list of crew to Registrar General.

The owner¹ must, on demand, deliver to the Registrar General of Shipping and Seamen² within 28 days of such demand being made a list of the crew on board the ship at a date specified by the Registrar General of Shipping and Seamen³.

A person who fails to comply with such an obligation commits an offence⁴.

1 As to the meaning of 'owner of the ship' for these purposes see PARA 539 note 2; and as to the meaning of 'ship' see PARA 452 note 2.

2 As to the Registrar General of Shipping and Seamen see PARA 61.

3 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 18.

4 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(2); and PARA 1145.

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541. Duration of list of crew.

Except in the case where a crew agreement for the ship¹ covers an indefinite period, a list of crew remains in force²:

- 292 (1) if any person is employed³ in the ship under a crew agreement, until all the persons employed under that agreement in that ship have been discharged⁴; and
- 293 (2) in the case of a ship engaged on coastal voyages⁵ for port authorities, whose crew are returned to shore within each period of 24 hours, for 12 months after the first entry relating to a seaman⁶ is made on the list⁷;
- 294 (3) in any other case, until the ship first calls at a port more than six months after the first entry relating to a seaman is made in the list⁸.

1 As to the meaning of 'ship' for these purposes see PARA 452 note 2. As to crew agreements see PARA 450.

2 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 19.

3 As to the meaning of references to the employment for these purposes see PARA 536 note 4.

4 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 19(a). As to the meaning of references to discharge for these purposes see PARA 538 note 16.

5 As to the meaning of 'coastal voyage' for these purposes see PARA 452 note 6.

6 As to the meaning of 'seaman' for these purposes see PARA 536 note 4.

7 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 19(b).

8 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 19(c).

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542. Delivery of list of crew.

The master must, within three days after a list of crew (other than one relating to a ship¹ of less than 25 gross tons² or to a ship belonging to a general lighthouse authority³) has ceased to be in force (or, if it is not practicable within that period, as soon as practicable thereafter), deliver the list to a superintendent or proper officer for the place where the ship is when the list of crew ceases to be in force⁴. A master who fails so to comply commits an offence⁵.

Where the crew agreement covers an indefinite period, the owner must deliver a list every six month after the crew agreement is opened, showing all changes that have occurred since the list was last submitted⁶:

- 295 (1) to the superintendent at a port in the United Kingdom⁷ where the ship was when the six-month period expired⁸; or
- 296 (2) if the ship was out of the United Kingdom at that time, to the Registrar General of Shipping and Seamen⁹,

within seven days of the expiry of each period of six months¹⁰. A person who fails so to comply commits an offence¹¹.

1 As to the meaning of 'ship' for these purposes see PARA 452 note 2.

2 As to the meaning of references to the gross tonnage of a ship see PARA 452 note 5.

3 As to General Lighthouse Authorities see PARA 1068.

4 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 20(1).

5 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(1); and PARA 1146.

6 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 20(2).

7 As to the meaning of 'United Kingdom' see PARA 17 note 3.

8 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 20(2)(i).

9 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 20(2)(ii). As to the Registrar General of Shipping and Seamen see PARA 61.

10 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 20(2).

11 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(2); and PARA 1146.

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543. Production of lists of crew on demand to officials.

A master must, on demand, produce to the Registrar General of Shipping and Seamen¹, a superintendent or proper officer, a surveyor of ships in the course of any inspection of the ship² or an officer of revenue and customs³ the list of crew required to be maintained in the ship⁴.

A master who fails so to comply commits an offence⁵.

1 As to the Registrar General of Shipping and Seamen see PARA 61.

2 ie in pursuance of his functions under the Merchant Shipping Act 1995 s 256 (see PARA 46) or under s 258 (see PARA 48); see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 21; Interpretation Act 1978 s 17(2)(b).

3 As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

4 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 21 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)); Interpretation Act 1978 s 17(2)(b). As to the meaning of 'ship' for these purposes see PARA 452 note 2. As to the requirement to keep a list of the crew see PARA 534.

5 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(1); and PARA 1147.

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(iii) British Seamen's Cards; Discharge Books

A. BRITISH SEAMEN'S CARDS

544. Power to make regulations in relation to British seamen's cards.

The Secretary of State¹ may make regulations² providing³:

- 297 (1) for the issue to British seamen⁴ of cards ('British seamen's cards') in such form and containing such particulars with respect to the holders thereof and such other particulars, if any, as may be prescribed by the regulations, and for requiring British seamen to apply for such cards⁵;
- 298 (2) for requiring the holders of British seamen's cards to produce them to such persons and in such circumstances as may be prescribed by the regulations⁶;
- 299 (3) for the surrender of British seamen's cards in such circumstances as may be prescribed by the regulations⁷;
- 300 (4) for any incidental or supplementary matters for which the Secretary of State thinks it expedient for the purposes of the regulations to provide⁸;

and any provision of the regulations having effect by virtue of head (1) above may be so framed as to apply to all British seamen or any description of them and as to have effect subject to any exemptions for which provision may be made by the regulations⁹.

Regulations so made may make a contravention¹⁰ of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 2 on the standard scale¹¹ or not exceeding a lesser amount¹².

If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a British seaman's card, he is liable on summary conviction to a fine not exceeding level 4 on the standard scale¹³.

1 As to the Secretary of State see PARA 38.

2 As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.

3 Merchant Shipping Act 1995 s 79(1). At the date at which this volume states the law, no such regulations had been made under s 79 but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408 (see PARA 545 et seq) have effect as if so made. As to the application of s 79 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

4 For these purposes, 'British seamen' means persons who are not aliens within the meaning of the British Nationality Act 1981 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 13) and are employed, or ordinarily employed, as masters or seamen: Merchant Shipping Act 1995 s 79(3). As to the meaning of 'seaman' see PARA 424; and as to the meaning of 'master' see PARA 424.

- 5 Merchant Shipping Act 1995 s 79(1)(a).
- 6 Merchant Shipping Act 1995 s 79(1)(b).
- 7 Merchant Shipping Act 1995 s 79(1)(c).
- 8 Merchant Shipping Act 1995 s 79(1)(d).
- 9 Merchant Shipping Act 1995 s 79(1).
- 10 As to the meaning of 'contravention' see PARA 50 note 3.
- 11 As to the meaning of 'standard scale' see PARA 1099.
- 12 Merchant Shipping Act 1995 s 79(2).
- 13 See the Merchant Shipping Act 1995 s 79(4); and PARA 1129.

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545. Application for British seaman's card.

A person who satisfies the conditions specified in heads (1) and (2) below, whether or not he has previously held a British seaman's card or a British seaman's identity card¹, may apply for a British seaman's card². The conditions so specified are that the person³:

- 301 (1) is a British seaman who is employed or ordinarily employed in a ship
otherwise than in an employment⁴, being:
31
73. (a) employment in a fishing vessel⁵;
74. (b) employment in a ship belonging to a general lighthouse authority⁶;
75. (c) except in the case of a person who is a cadet, employment on terms under
which he receives no wages or only nominal wages⁷; and
76. (d) in the case of a person who is not a citizen of the United Kingdom⁸ and
colonies⁹ or a British protected person¹⁰, employment in a ship registered otherwise
than in the United Kingdom, the Channel Islands, the Isle of Man or any colony,
protectorate¹¹ or protected state¹²,
77. and who is not excluded by virtue of heads (i) to (iv) below¹³; and
32
302 (2) is not the holder¹⁴ of a British seaman's card duly issued to him¹⁵ by the
Secretary of State¹⁶ or duly indorsed¹⁷.

The provisions which govern entitlement to apply for a British seaman's card¹⁸ do not apply to:

- 303 (i) a person who is not: (A) a British citizen¹⁹, a British overseas territories citizen²⁰
or a British Overseas citizen²¹; (B) a British protected person²²; or (C) a British
subject²³ without citizenship²⁴, and who holds a seaman's identity document which
has been issued to him by or under the authority of the government of a specified
Commonwealth country²⁵ or of any territory or trust territory²⁶ under the protection
of or administered by such government or of the Republic of Ireland, and of which
he has not ceased to be regarded as the holder by that government²⁷;
304 (ii) a person who holds a seaman's identity document: (A) which has been issued
to him by the government of any colony, protectorate or protected state²⁸; and (B)
of which he has not ceased to be regarded as the holder by that government²⁹;
305 (iii) a person in the employment of the Crown who is employed, but not ordinarily
employed, as a master or seaman³⁰; and
306 (iv) a member of the naval, military or air forces of the Crown or of any service
administered by the Defence Council³¹.

A person applying for a British seaman's card must make an application in accordance with the statutory provisions³² and, unless it has been lost or destroyed, must surrender to the Registrar General of Shipping and Seamen³³ or a superintendent any British seaman's card or British seaman's identity card previously held by him³⁴.

- 1 For these purposes, 'British seaman's identity card' means a British seaman's identity card issued under the British Seamen's Identity Cards Order 1942, SR & O 1942/2682 (revoked): Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(2)(b).
- 2 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 2(1). This provision is subject to reg 3 (see the text and notes 4-13, 18-31): see reg 2(1).
- 3 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 2(2).
- 4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, regs 2(2)(a), 3(1)(a).
- 5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 3(2)(a).
- 6 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 3(2)(b). As to General Lighthouse Authorities see PARA 1068.
- 7 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 3(2)(c).
- 8 As to the meaning of 'United Kingdom' see PARA 17 note 3. See also **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 7.
- 9 For these purposes, 'colony' has the same meaning as it has in and for the purposes of the British Nationality Act 1981 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 17): Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(2)(a).
- 10 For these purposes, 'British protected person' has the same meaning as it has in and for the purposes of the British Nationality Act 1981 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 10, 72 et seq): Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(2)(a).
- 11 For these purposes 'protectorate' has the same meaning as it has in and for the purposes of the British Nationality Act 1981 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 17): Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(2)(a). As a matter of fact, no protectorates now remain.
- 12 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 3(2)(d). For these purposes, 'protected state' has the same meaning as it has in and for the purposes of the British Nationality Act 1981 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 17): Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(2)(a).
- 13 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, regs 2(2)(a), 3(1)(b).
- 14 For these purposes, a person to whom a British seaman's card or a discharge book has been issued is referred to as the holder of it: Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(2)(d).
- 15 Ie under the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 5 (see PARA 546): see reg 2(2)(b).
- 16 As to the Secretary of State see PARA 38.
- 17 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 2(2)(b). The text refers to a British seaman's card indorsed under reg 8 (see PARA 547): see reg 2(2)(b).
- 18 Ie the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 2 (see the text and notes 1-17): see reg 3(3).
- 19 For these purposes, 'British citizen' has the same meaning as it has in and for the purposes of the British Nationality Act 1981 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq): Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(2)(a).
- 20 For these purposes, 'British overseas territories citizen' has the same meaning as it has in and for the purposes of the British Nationality Act 1981 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 44-57): Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(2)(a) (definition substituted by virtue of the British Overseas Territories Act 2002 s 2(3)).
- 21 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 3(3)(a)(i). (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). For these purposes, 'British Overseas citizen' has the same meaning as it has in and for the purposes of the British Nationality Act 1981 (see **BRITISH NATIONALITY,**

IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 58 et seq): Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(2)(a).

22 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 3(3)(a)(ii).

23 As to British subjects under the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 9, 66-67.

24 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 3(3)(a)(iii).

25 Is a country specified in the British Nationality Act 1981 s 37, Sch 3 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 11): see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 3(3)(a).

26 As to the meaning of 'United Kingdom trust territory' under the British Nationality Act 1948 s 32(1) (now repealed) see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 17. As a matter of fact, no United Kingdom trust territories now remain.

27 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 3(3)(a).

28 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 3(3)(b)(i).

29 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 3(3)(b)(ii).

30 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 3(3)(c).

31 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 3(3)(d). As to the Defence Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 443 et seq.

32 Is in accordance with the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 29 (see PARA 560): see reg 4.

33 As to the Registrar General of Shipping and Seamen see PARA 61.

34 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 4.

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546. Issue etc of British seaman's card.

If a person applying for a British seaman's card satisfies the specified conditions¹ and has paid the fee, if any, prescribed, then, in the case of a person having the right of abode², the Secretary of State³ must, and in any other case, may issue a British seaman's card to him⁴.

A British seaman's card must be in book form and must provide for there to be recorded in it from time to time in relation to its holder⁵ statements of the following particulars⁶:

- 307 (1) a statement that the document is a seafarer's identity document for the purposes of the International Labour Organisation Convention Concerning Seafarers' National Identity Documents⁷;
- 308 (2) full name of the holder⁸;
- 309 (3) height⁹;
- 310 (4) colour of eyes¹⁰;
- 311 (5) date and place of birth¹¹;
- 312 (6) distinguishing marks, if any¹²;
- 313 (7) discharge book number, if any¹³;
- 314 (8) nationality¹⁴;
- 315 (9) home address¹⁵;
- 316 (10) national insurance number¹⁶;
- 317 (11) photograph of holder¹⁷;
- 318 (12) signature of holder¹⁸;
- 319 (13) a statement of the period of validity¹⁹.

When his British seaman's card is lost, destroyed, defaced or required to be surrendered, a person ceases to be regarded as the holder of a British seaman's card²⁰.

1 le the conditions set out in the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 2(2) (see PARA 545): see reg 5.

2 For these purposes, a person is treated as having the right of abode if he has the right of abode in the United Kingdom under the Immigration Act 1971 s 2 (as to which see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 14): Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(3). As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 As to the Secretary of State see PARA 38.

4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 5. As to related offences concerning improper alterations made in seamen's documents see PARAS 559, 1157.

5 As to the meaning of references to 'holder' for these purposes see PARA 545 note 14.

6 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 6. The particulars are those specified in Sch 2 (see heads (1) to (13) in the text): see reg 6.

7 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 2 para 1. The Convention referred to in head (1) in the text is the Convention Concerning Seafarers' National Identity Documents (ILO No 108) (13 May 1958): see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 2 para 1.

- 8 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 2 para 2.
- 9 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 2 para 3.
- 10 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 2 para 4.
- 11 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 2 para 5.
- 12 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 2 para 6.
- 13 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 2 para 7.
- 14 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 2 para 8.
- 15 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 2 para 9.
- 16 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 2 para 10.
- 17 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 2 para 11.
- 18 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 2 para 12.
- 19 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 2 para 13.
- 20 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 9.

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547. Validity of British seaman's card.

A British seaman's card issued after 8 April 1987¹ is valid until the end of the period of ten years from the date of issue, provided that, if at the end of such period the holder² is not present in the United Kingdom³, his British seaman's card remains valid until he first returns to the United Kingdom or the expiry of a further 12 months from the date of expiry, whichever is the sooner⁴.

1 The date of the coming into operation of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408: see reg 1(1).

2 As to the meaning of references to 'holder' for these purposes see PARA 545 note 14.

3 As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 7. As to British seamen's cards issued pursuant to the Merchant Shipping (Seamen's Documents) Regulations 1972, SI 1972/1295 (revoked) see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 8; and as to British seamen's cards issued under the British Seamen's Cards Order 1960, SI 1960/967 (which was superseded by SI 1972/1295 (revoked)) see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, regs 13, 14. As to related offences concerning improper alterations made in seamen's documents see PARAS 559, 1157.

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548. Requirement to produce British seaman's card.

The holder¹ of a British seaman's card must produce it to the Registrar General of Shipping and Seamen² or a superintendent, a proper officer, his employer or the master of his ship, on demand or within such period as the person requiring its production may allow³.

A person who fails to produce his British seaman's card in pursuance of such a requirement⁴ commits an offence⁵; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁶.

1 As to the meaning of references to 'holder' for these purposes see PARA 545 note 14.

2 As to the Registrar General of Shipping and Seamen see PARA 61.

3 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 10(1).

4 In pursuance of a requirement made under the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 10 (see the text and notes 1-3): see reg 10(2).

5 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 10(2); and PARA 1148.

6 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2); and PARA 1148.

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549. Requirement to surrender British seaman's card.

The holder¹ of a British seaman's card² must surrender it to the Registrar General of Shipping and Seamen³ or a superintendent⁴, either:

- 320 (1) forthwith, upon his ceasing to be a British seaman or upon the card being defaced⁵; or
- 321 (2) on demand, after he has ceased to have the right of abode⁶.

A person who fails to comply with such a requirement⁷ commits an offence⁸; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁹.

1 As to the meaning of references to 'holder' for these purposes see PARA 545 note 14.

2 As to British seamen's cards see PARA 544 et seq.

3 As to the Registrar General of Shipping and Seamen see PARA 61.

4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 11(1).

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 11(1)(a).

6 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 11(1)(b). As to the meaning of 'right of abode' for these purposes see PARA 546 note 2.

7 I.e. the requirements of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 11 (see the text and notes 1-6): see reg 11(2); and PARA 1149.

8 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 11(2); and PARA 1149.

9 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2); and PARA 1149.

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550. Requirement to deliver British seaman's card.

Any person who comes into possession of a British seaman's card¹ of which he is not the holder² must forthwith deliver it to the Registrar General of Shipping and Seamen³ or to a superintendent⁴. A person who fails so to deliver a British seaman's card⁵ commits an offence⁶; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁷.

1 As to British seamen's cards see PARA 544 et seq.

2 As to the meaning of references to 'holder' for these purposes see PARA 545 note 14.

3 As to the Registrar General of Shipping and Seamen see PARA 61.

4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 12(1).

5 He who fails to comply with the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 12 (see the text and notes 1-4): see reg 12(2); and PARA 1150.

6 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 12(2); and PARA 1150.

7 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2); and PARA 1150.

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B. DISCHARGE BOOKS

551. Discharge books.

The Secretary of State¹ may make regulations² providing³:

- 322 (1) for the issue of discharge books: (a) to persons who are or have been employed in United Kingdom ships⁴; or (b) to persons who are or have been employed in other ships but are not aliens within the meaning of the British Nationality Act 1981⁵;
- 323 (2) for requiring the persons mentioned in head (1) above to apply for discharge books⁶;
- 324 (3) for the form of discharge books and the particulars (if any) that they are to contain with respect to their holders⁷;
- 325 (4) for requiring the holders of discharge books to produce them to such persons and in such circumstances as may be prescribed by the regulations⁸;
- 326 (5) for the surrender of discharge books in such circumstances as may be prescribed by the regulations⁹;
- 327 (6) for any incidental or supplementary matters for which the Secretary of State thinks it expedient for the purposes of the regulations to provide¹⁰;

and any provision of the regulations having effect by virtue of heads (1) to (3) above may be so framed as to apply to all such persons as are mentioned therein or any description of such persons and as to have effect subject to any exemptions for which provision may be made by the regulations¹¹.

Regulations so made may make a contravention¹² of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 2 on the standard scale¹³ or not exceeding a lesser amount¹⁴.

As from a day to be appointed¹⁵, regulations so made also may provide for a person to cease to be entitled to a discharge book in consequence of a recommendation made by a disciplinary body¹⁶ and for the reissue of discharge books which have been surrendered in consequence of such a recommendation¹⁷; and a person who, in the United Kingdom or elsewhere, obtains employment as a seaman¹⁸ on board a United Kingdom ship and does so when he is disentitled to a discharge book, or employs as such a seaman a person who he knows or has reason to suspect is so disentitled, commits an offence¹⁹.

1 As to the Secretary of State see PARA 38.

2 As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.

3 Merchant Shipping Act 1995 s 80(1). At the date at which this volume states the law, no such regulations had been made under s 80 but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Increased Penalties) Regulations 1979, SI 1979/1519 (an amending provision) and the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408 (see PARA 552 et seq) have effect as if so made. As to the

application of s 80 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

4 Merchant Shipping Act 1995 s 80(1)(a)(i) (s 80(1)(a) substituted, s 80(1)(aa), (ab) added, by the Merchant Shipping and Maritime Security Act 1997 s 18(1)). As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

5 Merchant Shipping Act 1995 s 80(1)(a)(ii) (as substituted: see note 4). As to who are aliens within the meaning of the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 13.

6 Merchant Shipping Act 1995 s 80(1)(aa) (as added: see note 4).

7 Merchant Shipping Act 1995 s 80(1)(ab) (as added: see note 4).

8 Merchant Shipping Act 1995 s 80(1)(b).

9 Merchant Shipping Act 1995 s 80(1)(c).

10 Merchant Shipping Act 1995 s 80(1)(d).

11 Merchant Shipping Act 1995 s 80(1) (amended by the Merchant Shipping and Maritime Security Act 1997 s 18(2)). As to the discharge of seamen generally see PARA 460 et seq. See also the Merchant Shipping Act 1995 s 28 (seamen left behind abroad otherwise than on discharge) (see PARA 460), s 29 (discharge of seamen when ship ceases to be registered in the United Kingdom) (see PARA 463) and s 60 (breaches by seamen of codes of conduct) (see PARA 506). As to the Secretary of State's power to make regulations prescribing fees to be charged in respect of the issue and recording of any certificate, licence or other document see PARA 62.

12 As to the meaning of 'contravention' see PARA 50 note 3.

13 As to the meaning of 'standard scale' see PARA 1099.

14 Merchant Shipping Act 1995 s 80(3).

15 The Merchant Shipping Act 1995 s 80(2) (see the text and notes 16-17) and s 80(4) (see the text and notes 18-19) do not have effect until the Secretary of State by order appoints a day for s 80(2), (4) to come into force: s 314(3), Sch 14 para 5(1), (2); and PARA 16 note 1. At the date at which this volume states the law, no such day had been appointed.

16 Ie by virtue of regulations made under the Merchant Shipping Act 1995 s 60(3) or s 60(4) (see PARA 506): see s 80(2) (not yet in force). See note 15.

17 Merchant Shipping Act 1995 s 80(2) (not yet in force). See note 15.

18 As to the meaning of 'seaman' see PARA 424.

19 See the Merchant Shipping Act 1995 s 80(4) (not yet in force); and PARA 1151.

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552. Application for discharge book.

A person who satisfies the following conditions¹, that is to say:

- 328 (1) that he is not exempted from the statutory requirements relating to crew agreements² by regulations made thereunder³; and
- 329 (2) that he is either: (a) employed as a seaman in a ship registered in the United Kingdom⁴ otherwise than in an employment which is to be disregarded for these purposes⁵; or (b) being a citizen of the United Kingdom⁶ and colonies⁷, has been discharged abroad after being so employed and has arrived in the United Kingdom within six months of being discharged, unless, at the time he arrived in the United Kingdom, he did not intend to take such employment⁸; and
- 330 (3) that he is not the holder⁹ of a discharge book duly issued¹⁰; and
- 331 (4) that he has not been required by the Secretary of State¹¹ to surrender a discharge book duly issued¹²,

must apply for a discharge book within seven days of satisfying those conditions¹³.

The provisions which govern entitlement to apply for a discharge book¹⁴ do not apply to a person¹⁵:

- 332 (i) if he holds a document: (A) containing substantially the same information as a discharge book¹⁶; and (B) which has been issued to him by or under the authority of the government of a specified country¹⁷; and (C) of which he has not ceased to be regarded as the holder by that government¹⁸;
- 333 (ii) if he is in the employment of the Crown and is not ordinarily employed as a master or seaman¹⁹.

A person applying for a discharge book must make an application in accordance with the statutory provisions²⁰ and, unless it has been lost or destroyed, produce to the Registrar General of Shipping and Seamen²¹ or a superintendent the latest discharge book or seaman's record book²², if any, previously held by him²³.

Any person required²⁴ to apply for a discharge book who fails to make an application for a discharge book in accordance with the statutory provisions²⁵ commits an offence²⁶; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence²⁷.

1 Ie the conditions specified in the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15(2) (see heads (1) to (4) in the text): see reg 15(1).

2 Ie the requirements of the Merchant Shipping Act 1995 s 25 (see PARA 450): see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15(2)(a); Interpretation Act 1978 s 17(2)(b).

3 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15(2)(a); Interpretation Act 1978 s 17(2)(b). The text refers to exemption by virtue of regulations made under the Merchant Shipping Act 1995 s 25(5)(b) (ie with respect to exemptions expressed in terms of descriptions of seamen) (see PARA 450):

see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15(2)(a); Interpretation Act 1978 s 17(2)(b).

4 As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the registration of ships in the United Kingdom see PARA 245 et seq.

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15(2)(b)(i); Interpretation Act 1978 s 17(2)(b). For these purposes, no regard is to be had to employment in a fishing vessel or in a ship exempted from the requirements of the Merchant Shipping Act 1995 s 25 by virtue of regulations made under s 25(5)(a) (ie with respect to exemptions expressed in terms of descriptions of certain ships or voyages) (see PARA 450); Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 16(3); Interpretation Act 1978 s 17(2)(b).

6 See **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 7.

7 For these purposes, 'colony' has the same meaning as it has in and for the purposes of the British Nationality Act 1981 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 17); Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(2)(a).

8 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15(2)(b)(ii).

9 As to the meaning of references to 'holder' for these purposes see PARA 545 note 14.

10 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15(2)(c). The text refers to a discharge book issued in accordance with the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408: see reg 15(2)(c). As to the issue, form and content of a discharge book see PARA 553.

11 Ie under the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 27(1) (see PARA 558): see reg 15(2)(d). As to the Secretary of State see PARA 38.

12 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15(2)(d). The text refers to a discharge book issued in accordance with the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408: see reg 15(2)(d).

13 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15(1). In computing any of the periods of seven days referred to in reg 15(1), any period during which the person concerned is not present in the United Kingdom must be disregarded: reg 1(4).

14 Ie the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15 (see the text and notes 1-13): see reg 16(1).

15 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 16(1).

16 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 16(1)(a).

17 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 16(1)(b). The countries referred to in the text are specified in Sch 4 and, accordingly, comprise: Bangladesh; Barbados; Canada; Falkland Islands; Fiji; Ghana; Guyana; Hong Kong; India; Republic of Ireland; Isle of Man; Jamaica; Kenya; Kiribati; Malaysia; Malta; Mauritius; Nigeria; Pakistan; Papua New Guinea; St Lucia; Seychelles; Sierra Leone; Singapore; South Africa; Sri Lanka; Tanzania; Tonga; Trinidad and Tobago; Tuvalu; Western Samoa; and Zambia: see Sch 4 (substituted by SI 1999/3281).

18 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 16(1)(c).

19 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 16(2).

20 Ie in accordance with the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 29 (see PARA 560): see reg 17(1).

21 As to the Registrar General of Shipping and Seamen see PARA 61.

22 For these purposes, 'seaman's record book' means a seaman's record book and certificates of discharge issued to a seaman by the Secretary of State: see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(2)(e).

23 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 17(1).

24 le under the provisions of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15(1) (see the text and notes 1-13): see reg 17(2); and PARA 1152.

25 le in accordance with the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408 (see the text and notes 20-23): see reg 17(2); and PARA 1152.

26 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 17(2); and PARA 1152.

27 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2); and PARA 1152.

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553. Issue, form and content of discharge book.

If a person applying for a discharge book is required¹ to apply for a discharge book and has paid the fee, if any, prescribed, the Secretary of State² must issue to him a discharge book containing the following particulars³:

- 334 (1) the name of the person applying for the document⁴;
- 335 (2) his home address⁵;
- 336 (3) the date and place of his birth⁶;
- 337 (4) any previous names (including, in the case of a woman who is or has been married, her maiden surname)⁷;
- 338 (5) his nationality⁸;
- 339 (6) the colour of his eyes⁹;
- 340 (7) his distinguishing marks, if any¹⁰;
- 341 (8) his height¹¹;
- 342 (9) the number of his discharge book, if any¹²;
- 343 (10) the grade, number and date of issue of any certificate of competency held by him¹³;
- 344 (11) the name, relationship and address of his next of kin¹⁴;
- 345 (12) his Merchant Navy Officer's Pension Fund ('MNOFF')/Merchant Navy Ratings Pension Fund ('MNRPF') number¹⁵;
- 346 (13) union membership number, if any¹⁶.

If a person applying for a discharge book: (a) is not required¹⁷ to apply for a discharge book¹⁸; (b) is, or has been, employed in a ship registered in the United Kingdom¹⁹ or (if the person is a British citizen²⁰) in a ship registered outside the United Kingdom²¹; (c) in respect of employment in a ship registered outside the United Kingdom, is otherwise unable, for whatever reason, to obtain a document containing substantially the same information as a discharge book from or acceptable to the ship's flag state²²; and (d) has paid the fee, if any, prescribed²³, the Secretary of State may issue to him a discharge book containing the particulars specified in heads (1) to (13) above²⁴.

A discharge book must be in book form and must provide for there to be recorded in it from time to time, in relation to the holder²⁵, statements of the following particulars²⁶:

- 347 (i) those specified in heads (1) to (3) and (5) to (13) above²⁷;
- 348 (ii) the name of each ship registered in the United Kingdom in which he is employed, its port of registry, official number²⁸ and gross or register tonnage, the capacity in which he is employed in the ship, the date on which and the place at which he begins to be so employed, and the description of each voyage and the date and place of his discharge; and like details in respect of employment in any other vessel²⁹;
- 349 (iii) dates of any Merchant Navy Training Board training courses he attends for instruction in survival at sea and the certificates or other qualifications, if any, obtained; and the dates and nature of any other training courses (including pre-sea training courses) he attends and the certificates or other qualifications, if any, obtained³⁰;

- 350 (iv) his income tax code, the year to which it applies and the date on which it becomes effective³¹;
- 351 (v) his inoculation and vaccination certificates³²;
- 352 (vi) records of tests of his eyesight except where these formed part of a statutory medical examination³³; and
- 353 (vii) a record of certificates issued under the Merchant Shipping (Medical Examination) Regulations 2002³⁴.

Only specified persons may make entries in a discharge book³⁵. A superintendent, a proper officer or the Registrar General of Shipping and Seamen³⁶ may at any time correct any entry in a discharge book³⁷.

1 le under the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15(1) (see PARA 552): see reg 18(1).

2 As to the Secretary of State see PARA 38.

3 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 18(1). The particulars referred to in the text are specified in Sch 3 (amended by SI 1995/1900) (see heads (1) to (13) in the text): see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 18(1). However, the information in heads (10) to (13) in the text is not required for application for a British seamen's card: Sch 3.

4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 3 para 1.

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 3 para 2.

6 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 3 para 3.

7 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 3 para 4.

8 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 3 para 5.

9 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 3 para 6.

10 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 3 para 7.

11 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 3 para 8.

12 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 3 para 9.

13 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 3 para 10.

14 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 3 para 12.

15 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 3 para 13.

16 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 3 para 14.

17 le under the provisions of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15(1) (see PARA 552): see reg 18(2)(a).

18 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 18(2)(a).

19 As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the registration of ships in the United Kingdom see PARA 245 et seq.

20 For these purposes, 'British citizen' has the same meaning as it has in and for the purposes of the British Nationality Act 1981 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq): Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(2)(a).

21 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 18(2)(b) (reg 18(2)(b) substituted, reg 18(2)(bb) added, by SI 1999/3281).

- 22 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 18(2)(bb) (as added: see note 21).
- 23 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 18(2)(c).
- 24 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 18(2). As to related offences concerning improper alterations made in seamen's documents see *PARAS 559, 1157*.
- 25 As to the meaning of references to 'holder' for these purposes see *PARA 545* note 14.
- 26 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 19.
- 27 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 19(a).
- 28 As to a ship's port of registry and official number etc see *PARA 279* et seq.
- 29 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 19(b).
- 30 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 19(c).
- 31 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 19(d).
- 32 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 19(e).
- 33 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 19(f).
- 34 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 19(g); Interpretation Act 1978 s 17(2)(b). The text refers to certificates issued under the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055 (as to which see *PARA 629*): see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 19(g); Interpretation Act 1978 s 17(2)(b).
- 35 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 20(1), (2) (reg 20(1) amended by SI 1999/3281). As to related offences concerning improper alterations made in seamen's documents see *PARAS 559, 1157*.
- 36 As to the Registrar General of Shipping and Seamen see *PARA 61*.
- 37 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 21. As to related offences concerning improper alterations made in seamen's documents see *PARAS 559, 1157*.

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554. Requirement to produce discharge book.

The holder¹ of a discharge book² must produce it on demand at any time³:

- 354 (1) to a superintendent, a proper officer, or the Registrar General of Shipping and Seamen⁴;
- 355 (2) to his employer and to the master of the ship in which the holder is employed⁵; and
- 356 (3) to any other person authorised⁶ to make an entry in it, for the purpose of making that entry⁷.

The holder of a discharge book who fails to produce it when required to do so⁸ commits an offence⁹; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence¹⁰.

A person to whom a discharge book is produced must return it to the holder as soon as is practical after the entry has been made or any inspection of it¹¹.

1 As to the meaning of references to 'holder' for these purposes see PARA 545 note 14.

2 As to discharge books see PARA 551 et seq.

3 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 22(1).

4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 22(1)(a) (amended by SI 1999/3281). As to the Registrar General of Shipping and Seamen see PARA 61.

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 22(1)(b).

6 I.e. authorised under the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 20 (see PARA 553): see reg 22(1)(c).

7 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 22(1)(c).

8 I.e. in accordance with the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 22 (see the text and notes 1-5): see reg 22(2); and PARA 1153.

9 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 22(2); and PARA 1153.

10 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2); and PARA 1153.

11 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 22(3).

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555. Requirement to deliver discharge book.

Any person having possession of a discharge book¹ must, after he becomes aware that the holder² has died, has been discharged from any ship³, or has been left behind in any country⁴, deliver it to a superintendent or proper officer or to the Registrar General of Shipping and Seamen⁵ as soon as practicable⁶.

A person who fails to comply with the requirement so to deliver a discharge book⁷ commits an offence⁸; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁹.

1 As to discharge books see PARA 551 et seq.

2 As to the meaning of references to 'holder' for these purposes see PARA 545 note 14.

3 As to the discharge of seamen generally see PARA 460 et seq; and see the Merchant Shipping Act 1995 s 60 (breaches by seamen of codes of conduct) (cited in PARA 506).

4 See the Merchant Shipping Act 1995 s 28 (seamen left behind abroad otherwise than on discharge); and PARA 460.

5 As to the Registrar General of Shipping and Seamen see PARA 61.

6 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 23(1).

7 Ie where any person fails to comply with requirements of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 23 (see the text and notes 1-6): see reg 23(2); and PARA 1154.

8 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 23(2); and PARA 1154.

9 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2); and PARA 1154.

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556. Effect of loss, destruction, defacement or filling up of discharge books.

When his discharge book¹ is lost, destroyed or defaced, or when the space provided in it for entries of any particulars² is filled up, a person ceases to be regarded as the holder³ of a discharge book and must, within seven days of satisfying the statutory conditions⁴, apply for a new discharge book⁵.

1 As to discharge books see PARA 551 et seq.

2 Ie except those referred to in the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 18(1), Sch 3 (see PARA 553): see reg 24.

3 As to the meaning of references to 'holder' for these purposes see PARA 545 note 14.

4 Ie the conditions specified in the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15(2) (see PARA 552): see reg 24.

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 24. As to applications for a discharge book see PARA 552.

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C. PROVISIONS RELATING TO BRITISH SEAMEN'S CARDS AND TO DISCHARGE BOOKS

557. Notification of errors in seamen's documents.

If it appears to the holder¹ thereof that any entry in a seaman's document² is not correct, he must forthwith inform the Registrar General of Shipping and Seamen³ or a superintendent⁴.

Any person who fails to comply with the requirement so to notify⁵ commits an offence⁶; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁷.

1 For the purposes of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Pt III (regs 25-30), references to the holder of a seamen's document are to be construed in accordance with the definition of 'seaman's document' (see note 2): see reg 25.

2 For these purposes, 'seaman's document' means a British seaman's card or a discharge book: see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 25. As to British seamen's cards see PARA 544 et seq; and as to discharge books see PARA 551 et seq.

3 As to the Registrar General of Shipping and Seamen see PARA 61.

4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 26(1).

5 Ie where any person fails to comply with requirements of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 26 (see the text and notes 1-4): see reg 26(2); and PARA 1155.

6 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 26(2); and PARA 1155.

7 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2); and PARA 1155.

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Surrender of seamen's documents.

558. Surrender of seamen's documents.

If it appears to a superintendent, a proper officer, a police officer or the Registrar General of Shipping and Seamen¹:

- 357 (1) that the holder² of a seaman's document³ was not entitled to apply for it at the time it was issued to him⁴; or
- 358 (2) that the person having possession of a seaman's document is not the holder thereof⁵,

the person, including the holder, having possession of that document must, on demand made by a superintendent, a proper officer, a police officer or the Registrar General of Shipping and Seamen, as the case may be, surrender it to him⁶.

Upon the recommendation of a shore-based disciplinary committee⁷ that the holder of a discharge book⁸ who was employed under a crew agreement, approved by the Secretary of State, to which the National Maritime Board agreement on disciplinary procedures applied and which required him to comply with the Code of Conduct, is no longer entitled to be the holder, consequent upon the commission by him of one of the breaches of the Code specified therein⁹, the holder must, on demand made by the Secretary of State, surrender the discharge book to him for a temporary period or permanently according to his demand¹⁰.

Any person who fails to comply with the requirement¹¹ so to surrender a seaman's document commits an offence¹²; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence¹³.

1 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 27(1). As to the Registrar General of Shipping and Seamen see PARA 61.

2 As to the meaning of 'holder' for these purposes see PARA 557 note 1.

3 As to the meaning of 'seaman's document' for these purposes see PARA 557 note 2.

4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 27(1)(a).

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 27(1)(b).

6 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 27(1).

7 For these purposes, 'shore-based disciplinary committee' means a committee established on shore by the National Maritime Board to review the future sea-going employment of seamen employed under a crew agreement, approved by the Secretary of State, to which the National Maritime Board agreement on disciplinary procedures applies and which requires seamen to comply with the Code of Conduct, in respect of whom the master is satisfied that they have committed any of the breaches of the Code specified in para 9 of the Code: Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(2)(f). 'Code of Conduct' means the publication entitled 'Code of Conduct for the Merchant Navy' published in 1978 by the National Maritime Board (revised June 2001): Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 1(2)(g). As to the Secretary of State see PARA 38.

8 As to discharge books see PARA 551 et seq.

9 le one of the breaches of the Code of Conduct specified in para 9 (see note 7): see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 27(2).

10 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 27(2).

11 le the requirements of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 27 (see the text and notes 1-10): see reg 27(3); and PARA 1156.

12 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 27(3); and PARA 1156.

13 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2); and PARA 1156.

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559. Alterations in seamen's documents.

No person other than a person duly authorised¹ and duly acting² may make any mark or entry upon, or erase, cancel or alter any mark or entry made upon or otherwise deface or destroy a seaman's document³.

Any person who contravenes this requirement⁴ commits an offence⁵; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁶.

1 He authorised by the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 5 (issue of British seamen's cards) (see PARA 546), reg 8 (validity of previously-issued British seamen's cards) (see PARA 547), reg 18 (issue of discharge books) (see PARA 553), reg 20 (entries in discharge books) (see PARA 553) or reg 21 (correction of entries in discharge books) (see PARA 553), as the case may be: see reg 28(1).

2 He acting in accordance with the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 5 (see PARA 546), reg 8 (see PARA 547), reg 18 (see PARA 553), reg 20 (see PARA 553) or reg 21 (see PARA 553), as the case may be: see reg 28(1).

3 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 28(1). As to the meaning of 'seaman's document' for these purposes see PARA 557 note 2.

4 He any person who contravenes the provisions of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 28 (see the text and notes 1-3): see reg 28(2); and PARA 1157.

5 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 28(2); and PARA 1157.

6 See the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2); and PARA 1157.

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560. Applications relating to seamen's documents.

An application for the issue of a seaman's document¹ or for the endorsement of a British seaman's card² must be made in writing to the Registrar General of Shipping and Seamen³ or a superintendent⁴, and:

359 (1) where:

33

78. (a) in the case of an application for a British seaman's card, the applicant surrenders to the Registrar General of Shipping and Seamen or a superintendent a British seaman's card⁵; or

79. (b) in the case of an application for a discharge book, the applicant produces to the Registrar General of Shipping and Seamen or a superintendent a discharge book or a seaman's record book held by him⁶; or

80. (c) in the case of an application for a British seamen's card or for a discharge book, it appears to the Registrar General of Shipping and Seamen or a superintendent that the applicant has lost his latest British seaman's card or discharge book, as the case may be, and that the Secretary of State⁷ has in his possession particulars of any of the matters that are required to be furnished in such applications⁸,

34

360 must state the applicant's name and particulars of such of the other required matters⁹ as are not correctly stated in the document (if any) which has been surrendered or produced in accordance with head (a) or head (b) above, or in the particulars referred to in head (c) above¹⁰; and

361 (2) in any other case, must state particulars of the matters that are required to be furnished in such applications¹¹;

and the applicant must furnish to the Registrar General of Shipping and Seamen or a superintendent such documents¹² and such other evidence as he may require for the proper consideration of the application¹³.

1 I.e. a British seaman's card or a discharge book: see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 25; and PARA 557 note 2. As to applications for the issue of a British seaman's card see PARA 545 et seq; and as to applications for the issue of a discharge book see PARA 552 et seq.

2 I.e. under the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 8 (validity of previously-issued British seamen's cards) (see PARA 547): see reg 29.

3 As to the Registrar General of Shipping and Seamen see PARA 61.

4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 29.

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 29(a)(i).

6 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 29(a)(ii).

7 As to the Secretary of State see PARA 38.

8 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 29(a)(iii). The text refers to particulars of any of the matters set out in reg 18(1), Sch 3 (see PARA 553): see reg 29(a)(iii).

9 ie the matters set out in the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, Sch 3 (see PARA 553): see reg 29(a).

10 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 29(a).

11 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 29(b). The text refers to particulars of the matters required for the application set out in Sch 3 (see PARA 553): see reg 29(b).

12 ie including, in the case of an application for both a British seaman's card and a discharge book, four copies, and in any other case, two copies, of a recent head and shoulders photograph of himself measuring 50 millimetres by 50 millimetres (two inches by two inches): see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 29.

13 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 29.

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(12) MERCHANT NAVY RESERVE

561. Disbandment of Merchant Navy Reserve scheme.

Under the Merchant Shipping Act 1995¹, the Secretary of State² has power to maintain the Merchant Navy Reserve whose members may, in such circumstances and for such periods as the Secretary of State may determine, be required by him to serve in ships³ belonging to or employed in the service of Her Majesty⁴. However, the Merchant Navy Reserve scheme was disbanded on 23 May 2000⁵.

1 le under the Merchant Shipping Act 1995 ss 82, 83. See note 5.

2 As to the Secretary of State see PARA 38.

3 As to the meaning of 'ship' see PARA 229.

4 See the Merchant Shipping Act 1995 s 82(1). Under s 82, the Secretary of State may make regulations with respect to the calling into, and discharge from, service of members of the Merchant Navy Reserve and with respect to other matters relating to the service of members of the Reserve; and any such regulations may make other provision: see s 82(4)-(7). By virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Merchant Navy Reserve) Regulations 1989, SI 1989/662, had effect as if made under the Merchant Shipping Act 1995 s 82 but these regulations were revoked with effect from 15 December 2003: see the Merchant Shipping (Merchant Navy Reserve) (Revocation) Regulations 2003, SI 2003/2861, regs 1, 2.

5 See note 4. At the date at which this volume states the law, the Merchant Shipping Act 1995 ss 82, 83 had not been repealed.

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6. PILOTAGE AND TOWAGE

(1) PILOTAGE

(i) In general

562. Regulation of pilotage.

Pilotage is regulated almost entirely by statute. The Pilotage Act 1913 consolidated with amendments the general law relating to pilotage¹ and provided for the complete reorganisation and revision of pilotage in all parts of the United Kingdom². That Act provided for pilotage authorities³ and pilotage districts⁴ to be established by pilotage orders⁵; empowered a pilotage authority to make byelaws⁶, subject to confirmation by the Secretary of State, for regulating pilotage in its district, to license pilots for its district⁷ and to grant pilotage certificates⁸; and provided for a number of other matters in relation to pilotage. The Pilotage Authorities (Limitation of Liability) Act 1936 enabled a pilotage authority to limit its liability in certain circumstances⁹; and the Merchant Shipping Act 1979 provided for the establishment of the Pilotage Commission¹⁰, the review of pilotage services and non-compulsory pilotage areas¹¹, changes in the obligations which applied where pilotage was compulsory¹² and in the method of making pilotage charges¹³ and other matters in relation to pilotage, including a number of miscellaneous amendments of the Pilotage Act 1913. The provisions of the Pilotage Act 1913, the Pilotage Authorities (Limitation of Liability) Act 1936 and the Merchant Shipping Act 1979 were repealed by¹⁴, and consolidated in, the Pilotage Act 1983, which was itself repealed and replaced by the Pilotage Act 1987¹⁵.

The 1987 Act abolished the Pilotage Commission¹⁶ and the then existing pilotage authorities¹⁷; and pilotage functions are now exercised by competent harbour authorities¹⁸. Competent harbour authorities are under a general duty to consider whether any, and if so what, pilotage services need to be provided and whether such services should be compulsory¹⁹. The authorities have power to license and employ pilots²⁰ and to make reasonable charges for pilotage services²¹. Provision is also made as to the rights and powers of pilots²², misconduct by pilots²³ and the limitation of liability in respect of pilots²⁴.

At the date at which this volume states the law, the Marine Navigation Bill had not yet completed its progress through Parliament, but it is concerned very specifically with improving safety at sea and in ports, and with updating the powers of the bodies responsible for maritime safety²⁵. To this end, it contains proposals (amongst other things) allowing a Competent Harbour Authority to relinquish its unwanted pilotage powers²⁶; providing for regulations to specify compulsory qualifications for pilots²⁷; amending the offence that arises where a master gives inadequate notification in relation to compulsory pilotage²⁸; and improving the regulation of pilotage exemption certificates²⁹.

1 The law had previously been contained partly in general and partly in local legislation with no clear distinction between the two.

2 See the Pilotage Act 1913 ss 1-6 (repealed).

3 See the Pilotage Act 1913 ss 16-29 (repealed).

- 4 See the Pilotage Act 1913 s 8 (repealed).
- 5 See the Pilotage Act 1913 s 7 (repealed).
- 6 See the Pilotage Act 1913 ss 17, 18 (repealed).
- 7 See the Pilotage Act 1913 s 16 (repealed).
- 8 See the Pilotage Act 1913 s 20 (repealed).
- 9 See the Pilotage Authorities (Limitation of Liability) Act 1936 ss 1-7 (repealed).
- 10 See the Merchant Shipping Act 1979 s 4, Sch 1 (repealed).
- 11 See the Merchant Shipping Act 1979 s 6 (repealed).
- 12 See the Merchant Shipping Act 1979 s 11 (repealed).
- 13 See the Merchant Shipping Act 1979 s 9 (repealed).
- 14 See the Pilotage Act 1983 s 69(3), Sch 4 (repealed).
- 15 See the Pilotage Act 1987 s 32(5), Sch 3.
- 16 See the Pilotage Act 1987 s 26 (repealed); and PARA 564.
- 17 See the Pilotage Act 1987 s 24 (repealed); and PARA 564.
- 18 See the Pilotage Act 1987 s 1; and PARA 565.
- 19 See the Pilotage Act 1987 s 2 (cited in PARA 566), s 7 (cited in PARA 570).
- 20 See the Pilotage Act 1987 s 3 (cited in PARA 567), s 4 (cited in PARA 568).
- 21 See the Pilotage Act 1987 s 10; and PARA 573.
- 22 See the Pilotage Act 1987 ss 17-20; and PARA 580 et seq.
- 23 See the Pilotage Act 1987 s 21; and PARA 1237.
- 24 See the Pilotage Act 1987 s 22; and PARA 584.
- 25 See the *Draft Marine Navigation Bill: Consultation Document* (Cm 7370) (May 2008).
- 26 See the Marine Navigation Bill cl 1, which amends the Pilotage Act 1987 s 1 (see PARA 565).
- 27 See the Marine Navigation Bill cl 2, which amends and supplements the Pilotage Act 1987 s 3 (see PARA 567).
- 28 See the Marine Navigation Bill cl 3, which amends the Pilotage Act 1987 s 15 (see PARA 578).
- 29 See the Marine Navigation Bill cll 4, 5, which amend and supplement the Pilotage Act 1987 s 8 (see PARA 571).

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563. Meanings of 'pilot' and 'authorised pilot' for the purposes of the Pilotage Act 1987.

In the Pilotage Act 1987, except where the context otherwise requires, 'pilot' means any person not belonging to a ship¹ who has the conduct thereof; and 'pilotage' is to be construed accordingly². 'Authorised pilot', in relation to any area, means a person authorised³ for that area and, in relation to any ship, a person so authorised in respect of ships of that description⁴.

1 For these purposes, 'ship' has the same meaning as in the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 611) and includes both British ships and foreign ships: Pilotage Act 1987 s 31(1).

2 Pilotage Act 1987 s 31(1) (definition amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 80(b)). See also *The Andoni* [1918] P 14 at 18, 14 Asp MLC 326 at 328 (where it was held that 'pilot' means prima facie a person taken on board at a particular place for the purpose of conducting a ship through a river, road or channel or from or into a port).

3 le under the Pilotage Act 1987 s 3 (see PARA 567): see s 31(1).

4 See the Pilotage Act 1987 s 31(1).

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(ii) Winding Up of former Pilotage Organisation

564. Abolition of former pilotage authorities etc.

On 1 October 1988, every pilotage authority¹ ceased to exist as such an authority²; and provision was made for a scheme or schemes for the transfer of the relevant property, rights and liabilities of the pilotage authorities³.

1 le within the meaning of the Pilotage Act 1983 (repealed) (see PARA 562).

2 See the Pilotage Act 1987 s 24 (s 24(1)-(10), (12) repealed by the Statute Law (Repeals) Act 2004); Pilotage Act 1987 (Commencement No 3) Order 1988, SI 1988/1137, art 3.

3 The provision was made as follows: for the transfer of the staff of the pilotage authorities (see the Pilotage Act 1987 s 25 (amended by the Employment Rights Act 1996 s 240, Sch 1 para 32; the Statute Law (Repeals) Act 2004)); for the abolition of the Pilotage Commission (see the Pilotage Act 1987 s 26 (repealed by the Statute Law (Repeals) Act 2004); and the Pilotage Act 1987 s 27 (repealed by the Statute Law (Repeals) Act 1993)); for pilots' compensation schemes (see the Pilotage Act 1987 s 28 (repealed by the Statute Law (Repeals) Act 2004)); and for the funding of reorganisation (see the Pilotage Act 1987 s 29 (s 29(1)-(4) repealed by the Statute Law (Repeals) Act 2004)).

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(iii) Pilotage Functions of Competent Harbour Authorities

A. IN GENERAL

565. Meanings of 'competent harbour authority' and 'harbour' under the Pilotage Act 1987.

'Competent harbour authority' means any harbour authority¹:

- 362 (1) which has statutory powers² in relation to the regulation of shipping movements and the safety of navigation within its harbour³; and
- 363 (2) whose harbour falls wholly or partly within an active former pilotage district⁴;

and references to a harbour authority's harbour are to the area or areas inside the limits of which its statutory powers and duties⁵ as a harbour authority are exercisable but, where there are two or more separate such areas, include only those areas which fall wholly or partly within an active former pilotage district⁶.

If the Secretary of State⁷ considers that in the interests of efficiency and safety of navigation a competent harbour authority should exercise pilotage functions both as respects its harbour and another area, he may by order⁸ provide:

- 364 (a) that the Pilotage Act 1987 is to apply to that authority as if its harbour included that other area⁹; and
- 365 (b) in a case where the other area is or falls within the harbour of another competent harbour authority, that that other authority is not to be a competent harbour authority for the purposes of the 1987 Act¹⁰.

A harbour authority which is not a competent harbour authority may apply to the Secretary of State to be treated for the purpose of the 1987 Act as such an authority; and on such an application the Secretary of State may by order provide that the applicant is to be a competent harbour authority for the purposes of the 1987 Act¹¹.

The Secretary of State may by order amend or revoke such an order¹² if it appears to him to be appropriate to do so, having regard to any change of circumstances which has occurred since the order was made¹³.

Before making such an order¹⁴, the Secretary of State must inform the persons he considers may be affected by the order of the terms of the proposed order and that they may, within such reasonable period as he may specify, object to the making of the order by giving him notice in writing¹⁵.

The Secretary of State must maintain a list of the authorities which are for the time being competent harbour authorities for the purposes of the 1987 Act¹⁶.

1 In the Pilotage Act 1987, except where the context otherwise requires, 'competent harbour authority' has the meaning given in s 1; and 'harbour authority' has the same meaning as in the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 619): Pilotage Act 1987 s 31(1). However, for the purposes of s 1(1), 'harbour authority' does not include:

848 (1) any authority excluded by virtue of the Harbours Act 1964 s 58 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 619) from being taken as a harbour authority for the purposes of the Harbours Act 1964 (Pilotage Act 1987 s 1(9)(a));

849 (2) a Queen's harbour master (s 1(9)(b)); or

850 (3) any own account operator (s 1(9)(c)).

For this purpose, 'own account operator' means a statutory harbour undertaker within the meaning of the Harbours Act 1964 s 42 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 684) whose activities in the harbour in question relate wholly or mainly to ships resorting to the harbour wholly or mainly for the purpose of bringing or receiving goods which:

851 (a) have been manufactured or produced by the statutory harbour undertaker or any connected person (Pilotage Act 1987 s 1(11)(a)); or

852 (b) are to be used by him or any connected person for the manufacture or production of goods or electricity (s 1(11)(b));

and, for these purposes, a person is connected with a statutory harbour undertaker if he is a holding company or subsidiary of the undertaker or a member of a consortium the members of which between them own, directly or indirectly, more than half of the issued share capital of the undertaker (s 1(11)). As to the meaning of 'ship' see PARA 563 note 1. As to Queen's harbour masters see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 693.

2 For these purposes, 'statutory powers' has the same meaning as in the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 605): Pilotage Act 1987 s 31(1).

3 Pilotage Act 1987 s 1(1)(a). For these purposes, powers exercisable by the harbour master for a harbour are to be taken to be exercisable by the harbour authority which appointed him: s 1(10). 'Harbour', in relation to a competent harbour authority, has the meaning given in s 1 (see the text and notes 5-6): see s 31(1).

4 Pilotage Act 1987 s 1(1)(b). For these purposes, any reference to a former pilotage district is to a district which was a pilotage district within the meaning of the Pilotage Act 1983 (repealed) immediately before 1 October 1988 (Pilotage Act 1987 ss 1(2), 31(1)); and, for the purposes of s 1(1), such a district is an active district if:

853 (1) at least one act of pilotage was performed there in 1984, 1985, 1986 or 1987 in respect of which information was given by the pilotage authority for the district in a return made by it under the Pilotage Act 1983 s 19 (repealed) (see the Pilotage Act 1987 s 1(2)(a)); or

854 (2) a certificate granted under the Pilotage Act 1983 s 20 (repealed) (masters' and first mates' pilotage certificates) was in force in respect of the district at any time in any of those years in respect of which information was so given (see the Pilotage Act 1987 s 1(2)(b)).

As to the meaning of 'pilotage' see PARA 563.

5 For these purposes, 'statutory duties' has the same meaning as in the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 605): Pilotage Act 1987 s 31(1).

6 Pilotage Act 1987 s 1(1).

7 As to the Secretary of State see PARA 38.

8 Any power to make an order or regulations under the Pilotage Act 1987 is exercisable by statutory instrument (s 30(1)); and any statutory instrument containing such an order or regulations is, except in relation to an order made under s 1 to which s 1(8) (see note 15) applies or an order made under s 33 (commencement orders), subject to annulment in pursuance of a resolution of either House of Parliament (s 30(2)). The Secretary of State may by regulations make such transitional, consequential or incidental provision, including provision repealing or amending any local enactment, as he considers necessary or expedient for the purpose of giving effect to or in consequence of any provision of the Pilotage Act 1987: see s 32(1). For these purposes, 'local enactment' includes an Act confirming a provisional order, an instrument made under a local enactment and an

instrument in the nature of a local enactment made under any other Act: s 32(2). As orders under s 1 are local in nature, they are not noted in this work.

9 Pilotage Act 1987 s 1(3)(a).

10 Pilotage Act 1987 s 1(3)(b).

11 Pilotage Act 1987 s 1(4).

12 le made under the Pilotage Act 1987 s 1(3) (see the text and notes 7-10) or s 1(4) (see the text and note 11): see s 1(5).

13 Pilotage Act 1987 s 1(5).

14 le under the Pilotage Act 1987 s 1 (see the text and notes 7-10): see s 1(7).

15 Pilotage Act 1987 s 1(7). Where any person has duly objected under s 1(7) to the making of a proposed order and has not withdrawn his objection, then, if the Secretary of State makes an order in that form, or a substantially similar form, it is subject to special parliamentary procedure, and the Statutory Orders (Special Procedure) Act 1945 (see **PARLIAMENT** vol 34 (Reissue) PARA 918 et seq) has effect accordingly but as if ss 2, 10(2) (preliminary proceedings) were omitted: Pilotage Act 1987 s 1(8). As to Scotland see s 1A (added in relation to Scotland only by the Transport and Works (Scotland) Act 2007 s 29(2), Sch 3).

16 Pilotage Act 1987 s 1(6).

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B. PROVISION OF PILOTAGE SERVICES

566. General duties as to provision of pilotage services.

Each competent harbour authority¹ must keep under consideration:

- 366 (1) whether any and, if so, what pilotage² services need to be provided to secure the safety of ships³ navigating⁴ in or in the approaches to its harbour⁵; and
- 367 (2) whether in the interests of safety pilotage should be compulsory for ships navigating in any part of that harbour or its approaches and, if so, for which ships and in which circumstances and what pilotage services need to be provided for those ships⁶.

Each competent harbour authority must, in performing these functions⁷, have regard in particular⁸ to the hazards involved in the carriage of dangerous goods or harmful substances by ship⁹.

Each competent harbour authority must provide such pilotage services as it considers need to be provided as mentioned in heads (1) and (2) above¹⁰.

1 As to the meaning of 'competent harbour authority' see PARA 565.

2 As to the meaning of 'pilotage' see PARA 563.

3 As to the meaning of 'ship' see PARA 563 note 1.

4 In the Pilotage Act 1987, references to a ship navigating or being navigated include references to its moving or being moved within a harbour for the purpose of changing from one mooring to another or of being taken into or out of any dock: s 31(2). As to the meaning of 'harbour' see PARA 565.

5 Pilotage Act 1987 s 2(1)(a).

6 Pilotage Act 1987 s 2(1)(b).

7 I.e its functions under the Pilotage Act 1987 s 2(1) (see the text and notes 1-6): see s 2(2).

8 I.e without prejudice to the generality of the Pilotage Act 1987 s 2(1) (see the text and notes 1-6): see s 2(2).

9 Pilotage Act 1987 s 2(2).

10 Pilotage Act 1987 s 2(3). The purpose of s 2 is not to impose duties on competent harbour authorities to pilot ships but to require them to supply properly authorised pilots for ships: *Oceangas (Gibraltar) Ltd v Port of London Authority, The Cavendish* [1993] 2 Lloyd's Rep 292 (Port of London Authority not vicariously liable in tort for the negligence of the pilot on board), applying *Fowles v Eastern and Australian SS Co Ltd* [1916] 2 AC 556, PC.

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567. Authorisation of pilots.

A competent harbour authority¹ may authorise² such persons to act as pilots³ in or in any part of the area in relation to which its statutory duty to provide pilotage services⁴ is exercisable as it considers are suitably qualified to do so⁵; and such an authorisation must specify the area within which it has effect and may specify that it only has effect in relation to ships⁶ of a particular description⁷.

The authority may determine the qualifications in respect of physical fitness, time of service, local knowledge, skill, character and otherwise to be required from persons applying for authorisation and provide for the examination of such persons⁸.

A competent harbour authority may suspend or revoke such an authorisation granted by it⁹ if it appears to it:

- 368 (1) that the authorised person has been guilty of any incompetence or misconduct affecting his capability as a pilot¹⁰;
- 369 (2) that the authorised person has ceased to have the qualifications required from persons applying for authorisation¹¹ or has failed to provide evidence that he continues to have those qualifications¹²;
- 370 (3) that the number of persons for the time being so authorised by it¹³ exceeds the number required to be authorised¹⁴; or
- 371 (4) that it is appropriate to do so by virtue of the termination of any contract or other arrangement under which the services of pilots are provided within its harbour¹⁵.

Before suspending or revoking an authorisation under head (1) or head (2) above, a competent harbour authority must give written notice of its intention to do so to the authorised person, stating the reasons for which it proposes to act, and must give him a reasonable opportunity of making representations¹⁶. Where a competent harbour authority suspends or revokes an authorisation of any person by virtue of head (3) or head (4) above, it must give him notice in writing stating that the suspension or revocation was by virtue of head (3) or head (4) above and specifying the duration of the authorisation in question and any previous authorisations granted to that person by the authority¹⁷.

If any person who is not an authorised pilot¹⁸ for an area describes himself while he is in that area as being such a pilot or so holds himself out as to indicate or be reasonably understood to indicate that he is such a pilot, he is guilty of an offence¹⁹.

A person who is an authorised pilot for a harbour for which the competent harbour authority is a local authority²⁰ is not by reason of his holding any office or employment as a pilot disqualified for being a member of any committee of that local authority with any functions in respect of which knowledge or experience relevant to pilotage is material or for being a representative of the local authority on a joint committee of the authority and another authority with such functions²¹. Similarly, a person who is an authorised pilot for a harbour for which the competent harbour authority is a local authority which is operating executive arrangements²² is not by reason of his holding any office or employment as a pilot disqualified²³:
(a) for being a member of the executive of the local authority where that executive is to any

extent responsible for any function in respect of which knowledge or experience relevant to pilotage is material²⁴; or (b) for being a member of a committee of the executive of the local authority with any functions in respect of which knowledge or experience relevant to pilotage is material²⁵.

1 As to the meaning of 'competent harbour authority' see PARA 565.

2 le subject to the Pilotage Act 1987 s 3(1A) (see note 5), s 3(3) (see note 8) and s 4 (see PARA 568): see s 3(1) (amended by SI 2003/1230).

3 As to the meaning of 'pilot' see PARA 563.

4 le under the Pilotage Act 1987 s 2(1) (see PARA 566): see s 3(1) (as amended: see note 2). As to the meaning of 'pilotage' see PARA 563.

5 Pilotage Act 1987 s 3(1) (as amended: see note 2). In considering whether a person is suitably qualified either to be authorised under s 3(1) to act as a pilot in inland waters only, or in inland waters and other waters, or to continue to be so authorised, a competent harbour authority must act in accordance with Sch A1 (added by SI 2003/1230): Pilotage Act 1987 s 3(1A) (added by SI 2003/1230). The Pilotage Act 1987 Sch A1 (as so added) applies:

855 (1) where a competent harbour authority requires particular formal qualifications from persons applying for authorisation, and a person applying for authorisation is a national of an EEA state other than the United Kingdom, and does not hold the required qualifications, but holds formal qualifications obtained in an EEA state other than the United Kingdom (see Sch A1 paras 2, 4 (as so added));

856 (2) where a competent harbour authority requires persons applying for authorisation to have knowledge of, and to demonstrate that they apply, specific national rules in force, and a person applying for authorisation is a national of an EEA State other than the United Kingdom and envisages acting as a pilot in a self-employed capacity or as a manager of an undertaking (see Sch A1 paras 3, 4 (as so added)); and

857 (3) where a competent harbour authority requires general commercial or professional knowledge and ability from persons applying for authorisation, and such an applicant has appropriate experience gained in an EEA state other than the United Kingdom (see Sch A1 paras 5, 6 (as so added)).

As to the proof required of various matters in relation to applications made under heads (1) to (3) see Sch A1 paras 7-11 (as so added). For these purposes, 'EEA state' means any state which is a contracting party to the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183): see the Pilotage Act 1987 Sch A1 para 1(2) (as so added). As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 As to the meaning of 'ship' see PARA 563 note 1.

7 Pilotage Act 1987 s 3(1) (as amended: see note 2).

8 Pilotage Act 1987 s 3(2) (amended by SI 2006/1031). However, nothing in any determination made by a competent harbour authority under the Pilotage Act 1987 s 3(2) permits the authority to act in such a way as to contravene Sch A1 (see note 5), which makes provision about persons with qualifications obtained in EEA states other than the United Kingdom: s 3(2A) (added by SI 2003/1230). Transitional provision was made as to the qualifications required for authorisation under the Pilotage Act 1987 s 3 in relation to persons who immediately before 1 October 1988 were the holders of licences under the Pilotage Act 1983 s 12 (repealed), time-expired apprentice pilots or recognised assistant pilots (see the Pilotage Act 1987 s 3(2) (as so amended)); and in relation to persons who were not immediately before that date holders of full licences (see s 3(3), (4)). For these purposes, 'recognised assistant pilot' means a person who acts as an assistant to pilots in a pilotage district and is recognised as such an assistant by the pilotage authority for the district but is not the holder of such a licence; and 'time-expired apprentice pilot' means a person who has served the full term of his apprenticeship as a pilot but is not the holder of a licence under the Pilotage Act 1983 s 12 (repealed): Pilotage Act 1987 s 3(10).

9 le under the Pilotage Act 1987 s 3 (see the text and notes 1-7): see s 3(5).

10 Pilotage Act 1987 s 3(5)(a).

11 le authorisation by the competent harbour authority under the Pilotage Act 1987 s 3 (see the text and notes 1-7): see s 3(5)(b).

12 Pilotage Act 1987 s 3(5)(b).

13 le authorised by the competent harbour authority under the Pilotage Act 1987 s 3 (see the text and notes 1-7): see s 3(5)(c).

14 Pilotage Act 1987 s 3(5)(c). Transitional provision was made in relation to revocation by an authority by virtue of head (3) in the text in cases where a person provided his services as a pilot under a contract for services: see s 3(5).

15 Pilotage Act 1987 s 3(5)(d). As to the meaning of 'harbour' see PARA 565. See *Hutchison v Clydeport Operations Ltd* 1998 SC 336, 1998 SLT 765, Ct of Sess (scope of the Pilotage Act 1987 s 3(5)(d) is not limited to self-employed persons but applies to any person providing the services of a pilot or pilots under a contract or arrangement).

16 Pilotage Act 1987 s 3(6).

17 Pilotage Act 1987 s 3(7).

18 As to the meaning of 'authorised pilot' see PARA 563.

19 See the Pilotage Act 1987 s 3(8); and PARA 1231.

20 For these purposes, 'local authority' means, in England and Wales, a local authority within the meaning of the Local Government Act 1972 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq): Pilotage Act 1987 s 3(10). As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

21 Pilotage Act 1987 s 3(9).

22 For these purposes, 'executive' and 'executive arrangements' have the same meaning as in the Local Government Act 2000 Pt II (ss 10-48) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 303): Pilotage Act 1987 s 3(10) (definitions added in relation to England by SI 2001/2237; and in relation to Wales by SI 2002/808).

23 Pilotage Act 1987 s 3(9A) (added in relation to England by SI 2001/2237; and in relation to Wales by SI 2002/808).

24 Pilotage Act 1987 s 3(9A)(a) (as added: see note 23).

25 Pilotage Act 1987 s 3(9A)(b) (as added: see note 23).

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568. Employment etc of authorised pilots.

A competent harbour authority¹ may make such arrangements as it considers appropriate for the provision of the services of authorised pilots² in the area in relation to which its statutory duty to provide pilotage services³ is exercisable, whether under a contract of employment or a contract for services⁴.

A competent harbour authority may refuse to authorise any person who is not willing to provide his services as a pilot in accordance with the arrangements made for the provision of such services in its area⁵.

A competent harbour authority may pay into any pilots' benefit fund⁶ such contributions as may be required by the rules governing that fund in respect of any authorised pilot providing his services under such arrangements as mentioned above⁷.

1 As to the meaning of 'competent harbour authority' see PARA 565.

2 As to the meanings of 'authorised pilot' and 'pilot' see PARA 563.

3 Ie under the Pilotage Act 1987 s 2(1) (see PARA 566): see s 4(1). As to the meaning of 'pilotage' see PARA 563.

4 Pilotage Act 1987 s 4(1). Transitional provision was made for a competent harbour authority, should it be so required, to offer contracts of employment to persons authorised under s 3 (see PARA 567) who were not, around the time of commencement of the Pilotage Act 1987 (ie 1 October 1988) employed by it under such a contract: see s 4(2), (3).

5 Pilotage Act 1987 s 4(4).

6 Ie established under the Pilotage Act 1983 s 15(1) (repealed): see the Pilotage Act 1987 s 4(5). Any pilots' benefit fund established under the Pilotage Act 1983 s 15(1)(i) (repealed) continued in existence notwithstanding the repeal of s 15 by the Pilotage Act 1987; and the Secretary of State had power by order to make such provision as he considered appropriate as to:

858 (1) the operation after the repeal of the Pilotage Act 1983 s 15 (repealed) of the byelaws under which any such fund was established (Pilotage Act 1987 s 32(3), Sch 1 para 4(1)(a));

859 (2) the appointment of the managers of any such fund and any powers to be exercisable as respects the management of the fund by the persons who were to appoint those managers (Sch 1 para 4(1)(b)); and

860 (3) the powers of any such managers to amend or revoke the byelaws or any other provision governing the fund (Sch 1 para 4(1)(c)).

Before making such an order in respect of any fund, the Secretary of State had to consult such persons or organisations as appeared to him to be representative of competent harbour authorities and such persons as appeared to him to be representative of the persons who might benefit from the fund: Sch 1 para 4(2). In exercise of the power so conferred the Secretary of State made (inter alia) the Pilotage Act 1987 (Pilots' National Pension Fund) Order 1987, SI 1987/2139. As to the making of orders under the Pilotage Act 1987 see PARA 565 note 8. As to the Secretary of State see PARA 38.

7 Pilotage Act 1987 s 4(5). The text refers to such arrangements as mentioned in s 4(1) (see the text and notes 1-4): see s 4(5).

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569. Pilot boats.

Ships¹ regularly employed in pilotage² services provided by or on behalf of any competent harbour authority³ ('pilot boats') must:

- 372 (1) if they are operated by the authority, be approved by the authority⁴; and
- 373 (2) otherwise be licensed by it⁵;

and the authority must not so approve or license any ship unless it is satisfied that it is suitable for use as a pilot boat⁶.

A competent harbour authority must make such other provision as it considers necessary for the operation of pilot boats⁷.

1 As to the meaning of 'ship' see PARA 563 note 1.

2 As to the meaning of 'pilotage' see PARA 563.

3 As to the meaning of 'competent harbour authority' see PARA 565.

4 Pilotage Act 1987 s 6(1)(a).

5 Pilotage Act 1987 s 6(1)(b).

6 Pilotage Act 1987 s 6(1). In the Pilotage Act 1987, except where the context otherwise requires, 'pilot boat' has the meaning given in s 6: s 31(1).

7 Pilotage Act 1987 s 6(2).

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C. COMPULSORY PILOTAGE

570. Pilotage directions.

If a competent harbour authority¹ considers that in the interests of safety it should do so, it must direct that pilotage² is compulsory for ships³ navigating⁴ in any area or part of an area in relation to which its statutory duty to provide pilotage services⁵ is exercisable⁶. Such a direction is called a 'pilotage direction'⁷.

A pilotage direction:

- 374 (1) may⁸ apply to all ships or all ships of a description specified in the direction, subject to any exceptions there specified⁹;
- 375 (2) must specify the area and circumstances in which it applies¹⁰;
- 376 (3) may specify the circumstances in which an authorised pilot¹¹ in charge of a ship to which it applies is to be accompanied by an assistant who is also an authorised pilot¹²; and
- 377 (4) may contain such supplementary provisions as the authority considers appropriate¹³.

A pilotage direction does not apply to ships of less than 20 metres in length or to fishing boats of which the registered length is less than 47.5 metres¹⁴.

Before giving a pilotage direction, a competent harbour authority must consult:

- 378 (a) the owners of ships which customarily navigate in the area to which the proposed direction would apply¹⁵; and
- 379 (b) any other persons who carry on harbour operations¹⁶ within the harbour¹⁷ of the authority¹⁸;

or, in either case, such persons as it considers to be representative of them¹⁹.

If a competent harbour authority considers that pilotage should be compulsory for ships navigating in any area outside its harbour, it must apply for a harbour revision order to be made²⁰ to extend the limits within which the authority has jurisdiction for the purposes of pilotage to include that area; and a pilotage direction given by it does not apply to that area until the limits have been so extended²¹.

A competent harbour authority must arrange for any pilotage direction given by it to be published in such manner as to bring it to the notice of those persons likely to be interested²².

1 As to the meaning of 'competent harbour authority' see PARA 565.

2 As to the meaning of 'pilotage' see PARA 563.

3 As to the meaning of 'ship' see PARA 563 note 1.

4 As to the meaning of references to a ship navigating or being navigated see PARA 566 note 4.

5 le under the Pilotage Act 1987 s 2(1) (see PARA 566): see s 7(1).

6 Pilotage Act 1987 s 7(1). This provision is subject to s 7(2)-(6) (see the text and notes 8-22): see s 7(1).

7 See the Pilotage Act 1987 ss 7(1), 31(1).

8 le subject to the Pilotage Act 1987 s 7(3) (see the text and note 14): see s 7(2)(a).

9 Pilotage Act 1987 s 7(2)(a).

10 Pilotage Act 1987 s 7(2)(b).

11 As to the meaning of 'authorised pilot' see PARA 563.

12 Pilotage Act 1987 s 7(2)(c).

13 Pilotage Act 1987 s 7(2)(d).

14 Pilotage Act 1987 s 7(3).

15 Pilotage Act 1987 s 7(4)(a).

16 For these purposes, 'harbour operations' has the same meaning as in the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 605): Pilotage Act 1987 s 31(1).

17 As to the meaning of 'harbour' see PARA 565.

18 Pilotage Act 1987 s 7(4)(b).

19 Pilotage Act 1987 s 7(4).

20 le under the Harbours Act 1964 s 14 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 628 et seq): see the Pilotage Act 1987 s 7(5).

21 Pilotage Act 1987 s 7(5). Transitional provision was made in relation to circumstances where a competent harbour authority, which proposed on or after 1 October 1988 to direct that pilotage should be compulsory for ships navigating in an area outside its harbour, applied before that day for the making of the harbour revision order which would be required by virtue of s 7(5) and that area was an area in which pilotage was compulsory by virtue of an order under the Pilotage Act 1983 s 9(1)(i) (repealed): see the Pilotage Act 1987 s 32(3), Sch 1 para 3.

22 Pilotage Act 1987 s 7(6).

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571. Pilotage exemption certificates.

A competent harbour authority¹ which has given a pilotage direction² must, on application by any person who is bona fide the master³ or first mate of any ship⁴, grant a certificate (a 'pilotage exemption certificate')⁵ to him if it is satisfied (by examination or by reference to such other requirements as it may reasonably impose)⁶:

- 380 (1) that his skill, experience and local knowledge are sufficient for him to be capable of piloting the ship of which he is master or first mate (or that and any other ships specified in the certificate) within its harbour⁷ or such part of its harbour as may be so specified⁸; and
- 381 (2) in any case where it appears to the authority to be necessary in the interests of safety, that his knowledge of English is sufficient for that purpose⁹.

The requirements so imposed¹⁰:

- 382 (a) must not be unduly onerous having regard to the difficulties and danger of navigation in the harbour in question¹¹; and
- 383 (b) must not be more onerous than those required to be met by a person¹² applying to the authority¹³ for authorisation¹⁴.

If the Secretary of State¹⁵ is satisfied, on application by a competent harbour authority, that it is appropriate to do so by reason of the unusual hazards involved in shipping movements within its harbour, he may direct that during such period, not exceeding three years, as he may specify, notwithstanding that the authority is satisfied as to the matters mentioned in heads (1) and (2) above¹⁶, it may refuse to grant¹⁷ pilotage exemption certificates¹⁸. Where a direction is so given¹⁹ in respect of a competent harbour authority, any pilotage exemption certificate granted by the authority ceases to have effect and the authority must notify the holders of such certificates of that fact²⁰.

A pilotage exemption certificate does not remain in force for more than three years from the date on which it is granted²¹; but:

- 384 (i) if the holder continues to be the master or first mate of a ship, may be renewed annually by the competent harbour authority on application by the holder if the authority continues to be satisfied as to the matters mentioned in heads (1) and (2) above²²; and
- 385 (ii) on the application of the holder may be altered so as to refer to different ships from those to which it previously referred if the authority is so satisfied as respects those ships²³.

A competent harbour authority may suspend or revoke such a certificate granted by it²⁴ if it appears to it that the holder has been guilty of any incompetence or misconduct affecting his capability to pilot the ship of which he is master or first mate or any other ships specified in the certificate²⁵.

Before refusing an application by any person²⁶ for the grant, renewal or alteration of a certificate or suspending or revoking a certificate held by any person, a competent harbour authority must give him written notice of its intention to do so, stating the reasons for which it proposes to act, and must give him a reasonable opportunity of making representations²⁷.

A competent harbour authority may charge such fees in respect of any examination so required to be taken²⁸ or the grant, renewal or alteration of any pilotage exemption certificate as the authority considers reasonable for the purposes of meeting its administrative costs in connection therewith²⁹.

1 As to the meaning of 'competent harbour authority' see PARA 565.

2 As to the meaning of 'pilotage direction' see PARA 570.

3 For these purposes, 'master' has the same meaning as in the Merchant Shipping Act 1995 (see PARA 424): Pilotage Act 1987 s 31(1) (definition amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 80(b)).

4 As to the meaning of 'ship' see PARA 563 note 1.

5 In the Pilotage Act 1987, except where the context otherwise requires, 'pilotage exemption certificate' means a certificate granted under s 8: s 31(1). Transitional provision was made in relation to any pilotage certificate which immediately before 1 October 1988 was in force under the Pilotage Act 1983 s 20 (repealed): see the Pilotage Act 1987 s 32(3), Sch 1 para 5.

6 Pilotage Act 1987 s 8(1). This provision is subject to s 8(3) (see the text and notes 15-18): see s 8(1).

7 As to the meaning of 'harbour' see PARA 565.

8 Pilotage Act 1987 s 8(1)(a).

9 Pilotage Act 1987 s 8(1)(b).

10 Ie under the Pilotage Act 1987 s 8(1) (see the text and notes 1-9): see s 8(2).

11 Pilotage Act 1987 s 8(2)(a).

12 Ie other than a person who immediately before 1 October 1988 was the holder of a licence under the Pilotage Act 1983 s 12 (repealed) or a time-expired apprentice pilot or recognised assistant pilot within the meaning of the Pilotage Act 1987 s 3 (see PARA 567 note 8): see s 8(2)(b).

13 Ie under the Pilotage Act 1987 s 3 (see PARA 567): see s 8(2)(b).

14 Pilotage Act 1987 s 8(2)(b).

15 As to the Secretary of State see PARA 38.

16 Ie notwithstanding that the authority is satisfied as mentioned in the Pilotage Act 1987 s 8(1) (see the text and notes 1-9): see s 8(3).

17 Ie under the Pilotage Act 1987 s 8(1) (see the text and notes 1-9): see s 8(3).

18 Pilotage Act 1987 s 8(3).

19 Ie under the Pilotage Act 1987 s 8(3) (see the text and notes 15-18): see s 8(4).

20 Pilotage Act 1987 s 8(4).

21 Pilotage Act 1987 s 8(5).

22 Pilotage Act 1987 s 8(5)(a). The text refers to the authority continuing to be satisfied as mentioned in s 8(1) (see the text and notes 1-9): see s 8(5)(a).

23 Pilotage Act 1987 s 8(5)(b).

24 Ie under the Pilotage Act 1987 s 8 (see the text and notes 1-9): see s 8(6).

- 25 Pilotage Act 1987 s 8(6).
- 26 le under the Pilotage Act 1987 s 8 (see the text and notes 1-9): see s 8(7).
- 27 Pilotage Act 1987 s 8(7).
- 28 le for the purposes of the Pilotage Act 1987 s 8 (see the text and notes 1-27): see s 8(8).
- 29 Pilotage Act 1987 s 8(8).

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572. Prevention of discrimination in favour of authority's ships.

A competent harbour authority¹ must secure that any ship² owned or operated by it and used by it in the exercise of its functions otherwise than under the Pilotage Act 1987 is subject to the same obligations as respects pilotage³ whilst navigating⁴ within its harbour⁵ as any other ship⁶.

1 As to the meaning of 'competent harbour authority' see PARA 565.

2 As to the meaning of 'ship' see PARA 563 note 1.

3 As to the meaning of 'pilotage' see PARA 563.

4 As to the meaning of references to a ship navigating or being navigated see PARA 566 note 4.

5 As to the meaning of 'harbour' see PARA 565.

6 Pilotage Act 1987 s 9.

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D. CHARGING BY AUTHORITIES

573. Pilotage charges.

A competent harbour authority¹ may make reasonable charges in respect of the pilotage services provided by it². The charges to be so made may include³:

- 386 (1) charges for the services of a pilot⁴ authorised by the authority⁵;
- 387 (2) charges in respect of any expenses reasonably incurred by such a pilot in connection with the provision of his services as a pilot⁶;
- 388 (3) charges by way of penalties payable in cases where the estimated time of arrival or departure of a ship⁷ is not notified as required by the authority or the ship does not arrive or depart at the notified time⁸;
- 389 (4) charges in respect of the cost of providing, maintaining and operating pilot boats⁹ for the area¹⁰; and
- 390 (5) charges in respect of any other costs involved in providing and maintaining the pilotage organisation provided by the authority¹¹.

A competent harbour authority which has given a pilotage direction¹² may also make reasonable charges in respect of any ship navigating¹³ within the area to which the direction applies under the pilotage of a master¹⁴ or first mate who is the holder of a pilotage exemption certificate¹⁵ in respect of the area and ship in question¹⁶.

Different charges may be made¹⁷ in different circumstances¹⁸.

A competent harbour authority must arrange for the charges to be made by it¹⁹ to be published in such manner as to bring them to the notice of those persons likely to be interested²⁰.

Charges so imposed by a competent harbour authority²¹ are recoverable as a civil debt or in any other manner in which ship, passenger and goods dues²² are recoverable by the authority²³.

1 As to the meaning of 'competent harbour authority' see PARA 565.

2 Pilotage Act 1987 s 10(1). As to the meaning of 'pilotage' see PARA 563.

3 Pilotage Act 1987 s 10(2). Section 10(2) is without prejudice to the generality of s 10(1) (see the text and notes 1-2): see s 10(2).

4 As to the meaning of 'pilot' see PARA 563.

5 Pilotage Act 1987 s 10(2)(a).

6 Pilotage Act 1987 s 10(2)(b).

7 As to the meaning of 'ship' see PARA 563 note 1.

8 Pilotage Act 1987 s 10(2)(c).

9 As to the meaning of 'pilot boat' see PARA 569.

10 Pilotage Act 1987 s 10(2)(d).

- 11 Pilotage Act 1987 s 10(2)(e).
- 12 As to the meaning of 'pilotage direction' see PARA 570.
- 13 As to the meaning of references to a ship navigating or being navigated see PARA 566 note 4.
- 14 As to the meaning of 'master' see PARA 571 note 3.
- 15 As to the meaning of 'pilotage exemption certificate' see PARA 571.
- 16 Pilotage Act 1987 s 10(3).
- 17 Ie under the Pilotage Act 1987 s 10: see s 10(4).
- 18 Pilotage Act 1987 s 10(4).
- 19 Ie under the Pilotage Act 1987 s 10: see s 10(5).
- 20 Pilotage Act 1987 s 10(5).
- 21 Ie under the Pilotage Act 1987 s 10: see s 10(7).
- 22 For these purposes, 'ship, passenger and goods dues' has the same meaning as in the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 628): Pilotage Act 1987 s 10(8).
- 23 Pilotage Act 1987 s 10(7). The Harbours Act 1964 s 31(2)-(12) (right of objection to ship, passenger and goods dues) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 671) applies as respects charges imposed by an authority by virtue of the Pilotage Act 1987 s 10 as it applies as respects charges to which the Harbours Act 1964 s 31 applies, but with the substitution for the references to the persons mentioned in s 31(2)(a), (b), (3)(b) of references to the owners of ships which customarily navigate in the harbour in question, to any persons who carry on harbour operations within that harbour, and to any other harbour authority to whose harbour ships obtain access through that harbour (or, in any of those cases, persons representative of them) and with the omission of s 31(2)(i), (iii): Pilotage Act 1987 s 10(6). As to the meaning of 'harbour operations' see PARA 570 note 16.

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E. AGENTS AND JOINT ARRANGEMENTS

574. Use of agents; joint arrangements.

A competent harbour authority¹ may arrange for its functions in relation to the provision of pilotage services, with exceptions², to be exercised on its behalf by such other persons as it thinks fit and may establish such companies as it thinks fit to exercise those functions on its behalf³.

A competent harbour authority may arrange for all or any of its functions relating to pilotage⁴, other than its statutory duty to provide pilotage services⁵, to be exercised on its behalf by another competent harbour authority⁶.

Two or more competent harbour authorities may arrange to discharge any of their functions relating to pilotage jointly; and such arrangements may provide for the discharge of such functions by a joint committee or any other body established by the authorities for that purpose⁷.

An authority which has so entered into such arrangements with another authority⁸ may withdraw from the arrangements on giving reasonable notice to the other authority⁹.

1 As to the meaning of 'competent harbour authority' see PARA 565.

2 Ie other than its functions under the Pilotage Act 1987 s 2(1) (see PARA 566), s 3(1) (see PARA 567), s 4(2) (see PARA 568), s 6(1)(b) (see PARA 569), s 7(1) (see PARA 570), s 8(1) (see PARA 571) or s 28 (repealed) (see PARA 564) or its function of determining the qualifications to be required from persons applying for authorisation under s 3(2) (see PARA 567) or any charge to be imposed under s 10(1) or (3) (see PARA 573): see s 11(1).

3 Pilotage Act 1987 s 11(1).

4 As to the meaning of 'pilotage' see PARA 563.

5 Ie other than its duty under the Pilotage Act 1987 s 2(1) (see PARA 566): see s 11(2).

6 Pilotage Act 1987 s 11(2).

7 Pilotage Act 1987 s 11(3).

8 Ie under the Pilotage Act 1987 s 11(2) or (3) (see the text and notes 4-7): see s 11(4).

9 Pilotage Act 1987 s 11(4).

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575. Information and directions as to joint arrangements.

Where:

- 391 (1) the harbours¹ of two or more competent harbour authorities² fall wholly or partly within a single former pilotage district³;
- 392 (2) access for ships⁴ to the harbour of a competent harbour authority is customarily available through the harbour of another competent harbour authority⁵;
- 393 (3) there is any person other than the competent harbour authority who carries on harbour operations⁶ within the harbour of a competent harbour authority⁷;
- 394 (4) there is any person who carries on harbour operations in a harbour⁸ which is not the harbour of a competent harbour authority and access to which is customarily available through the harbour of a competent harbour authority⁹; or
- 395 (5) the harbour of a competent harbour authority and a dockyard port¹⁰ for which a Queen's harbour master has been appointed¹¹ fall wholly or partly within a single former pilotage district¹²,

the Secretary of State¹³ may require any of the authorities (or, in the case of heads (3), (4) or (5) above, the authority) concerned to provide him with such information as he may require concerning the arrangements made or proposed by the authorities (or authority) in question for the provision of pilotage services and that information must be provided in such form as the Secretary of State may require¹⁴.

If the Secretary of State considers that any arrangements of which particulars are so provided¹⁵ are not satisfactory, he may direct that they are to have effect subject to such modifications as he may specify in the direction¹⁶ or he may direct the authorities (or authority) concerned to make different arrangements¹⁷.

If the statement so provided¹⁸ is to the effect that no arrangements have been made or proposed by the authorities (or authority) in question for the provision of pilotage services in the area concerned and the Secretary of State considers that such arrangements should be made, he must direct the authorities (or authority) in question to make appropriate arrangements¹⁹.

1 As to the meaning of 'harbour' see PARA 565.

2 As to the meaning of 'competent harbour authority' see PARA 565.

3 Pilotage Act 1987 s 12(1)(a). As to the meaning of 'former pilotage district' see PARA 565 note 4.

4 As to the meaning of 'ship' see PARA 563 note 1.

5 Pilotage Act 1987 s 12(1)(b).

6 As to the meaning of 'harbour operations' see PARA 570 note 16.

7 Pilotage Act 1987 s 12(1)(c).

8 le within the meaning of the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 611): see the Pilotage Act 1987 s 12(1)(d).

9 Pilotage Act 1987 s 12(1)(d).

10 Ie within the meaning of the Dockyard Ports Regulation Act 1865 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 613): see the Pilotage Act 1987 s 12(1)(e).

11 Ie under the Dockyard Ports Regulation Act 1865 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 693): see the Pilotage Act 1987 s 12(1)(e).

12 Pilotage Act 1987 s 12(1)(e).

13 As to the Secretary of State see PARA 38.

14 Pilotage Act 1987 s 12(1). As to the resolution of disputes between authorities concerning arrangements or statements about arrangements see PARA 576.

15 Ie under the Pilotage Act 1987 s 12(1) (see the text and notes 1-14): see s 12(2).

16 Pilotage Act 1987 s 12(2)(a). Section 11(4) (see PARA 574) does not apply to any arrangements made or modified by virtue of a direction under s 12: s 12(4).

17 Pilotage Act 1987 s 12(2)(b).

18 Ie under the Pilotage Act 1987 s 12(1) (see the text and notes 1-14): see s 12(3).

19 Pilotage Act 1987 s 12(3).

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576. Resolution of disputes between authorities concerning arrangements.

Where any dispute arises between two or more competent harbour authorities¹ concerning:

- 396 (1) arrangements for the provision of pilotage² services made by one authority which affects navigation in another authority's harbour³;
- 397 (2) arrangements made by two or more authorities for the discharge of their functions in relation to pilotage jointly⁴; or
- 398 (3) arrangements that are required to be made or any statement that is required to be prepared about arrangements made or proposed for the provision of pilotage services⁵,

or between a competent harbour authority and:

- 399 (a) any person other than the competent harbour authority who carries on harbour operations⁶ within the harbour of a competent harbour authority⁷;
- 400 (b) any person who carries on harbour operations in a harbour⁸ which is not the harbour of a competent harbour authority and access to which is customarily available through the harbour of a competent harbour authority⁹; or
- 401 (c) a Queen's harbour master who has been appointed¹⁰ for the harbour of a competent harbour authority and a dockyard port¹¹ falling wholly or partly within a single former pilotage district¹²,
- 402 concerning arrangements for the provision of pilotage services made by the authority which affect navigation in the harbour of the competent harbour authority or such a statement or arrangement¹³,

any party to the dispute may appeal to the Secretary of State¹⁴.

On such an appeal, the Secretary of State must settle the dispute in such manner as he considers appropriate¹⁵; and he may in particular direct:

- 403 (i) that such arrangements¹⁶ are not to have effect or are to have effect subject to such modifications as he may specify¹⁷; or
- 404 (ii) in the case of a dispute between two competent harbour authorities, that one authority only may exercise functions under the Pilotage Act 1987 in relation to any area in respect of which there is a dispute¹⁸.

1 As to the meaning of 'competent harbour authority' see PARA 565.

2 As to the meaning of 'pilotage' see PARA 563.

3 Pilotage Act 1987 s 13(1)(a). As to the meaning of 'harbour' see PARA 565. The arrangements mentioned in s 13(1) include arrangements concerning which a previous dispute has been settled under s 13(2) (see the text and notes 15-18) and arrangements made or modified by virtue of s 13(2): s 13(3).

4 Pilotage Act 1987 s 13(1)(b). See note 3.

5 Pilotage Act 1987 s 13(1)(c). The text refers to any statement required to be prepared or arrangements required to be made under s 12 (see PARA 575): see s 13(1)(c). See note 3.

6 As to the meaning of 'harbour operations' see PARA 570 note 16.

7 Ie such a person as is mentioned in the Pilotage Act 1987 s 12(1)(c) (see PARA 575): see s 13(1).

8 Ie within the meaning of the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 611): see the Pilotage Act 1987 s 12(1)(d).

9 Ie such a person as is mentioned in the Pilotage Act 1987 s 12(1)(d) (see PARA 575): see s 13(1).

10 Ie under the Dockyard Ports Regulation Act 1865 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 693): see the Pilotage Act 1987 s 12(1)(e).

11 Ie within the meaning of the Dockyard Ports Regulation Act 1865 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 613): see the Pilotage Act 1987 s 12(1)(e).

12 Ie such a person as is mentioned in the Pilotage Act 1987 s 12(1)(e) (see PARA 575): see s 13(1).

13 Pilotage Act 1987s 13(1). See note 3.

14 Pilotage Act 1987s 13(1). As to the Secretary of State see PARA 38.

15 Pilotage Act 1987 s 13(2).

16 Ie such arrangements as are mentioned in the Pilotage Act 1987 s 13(1) (see the text and notes 1-14): see s 13(2).

17 Pilotage Act 1987 s 13(2)(a).

18 Pilotage Act 1987 s 13(2)(b).

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F. ACCOUNTS OF COMPETENT HARBOUR AUTHORITY

577. Authority's obligations to provide statement of accounts.

Regulations under the Harbours Act 1964¹ may require any authority² which is a competent harbour authority³ to make available for inspection by the public any statement of accounts required to be prepared by it which relate to the activities of the authority, or any agent of the authority, in relation to pilotage⁴.

Where any such activities of a competent harbour authority are carried out on its behalf by any agent, the agent must furnish the authority with all such information concerning those activities as the authority may reasonably require to fulfil its obligations in relation to any such statement of accounts⁵.

¹ See under the Harbours Act 1964 s 42 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 684): see the Pilotage Act 1987 s 14(1).

² See any authority to which the Harbours Act 1964 s 42 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 684) applies: see the Pilotage Act 1987 s 14(1).

³ As to the meaning of 'competent harbour authority' see PARA 565.

⁴ Pilotage Act 1987 s 14(1). As to the meaning of 'pilotage' see PARA 563. For the relevant requirements see the Statutory Harbour Undertakings (Pilotage Accounts) Regulations 1988, SI 1988/2216, which came into force on 25 January 1989 (see reg 1) and make provision in relation to the authorities and activities to which the regulations apply (see reg 3); pilotage accounts (see reg 4); and the publication of pilotage accounts (see reg 5).

⁵ Pilotage Act 1987 s 14(3).

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(iv) General Provisions concerning Pilotage

A. COMPULSORY PILOTAGE

578. Requirements where compulsory pilotage in force.

A ship¹ which is being navigated² in an area and in circumstances in which pilotage³ is compulsory for it by virtue of a pilotage direction⁴ must be:

- 405 (1) under the pilotage of an authorised pilot⁵ accompanied by such an assistant, if any, as is required by virtue of the direction⁶; or
- 406 (2) under the pilotage of a master⁷ or first mate possessing a pilotage exemption certificate⁸ in respect of that area and ship⁹.

If any ship is not under pilotage as so required¹⁰ after an authorised pilot has offered to take charge of the ship, the master of the ship is guilty of an offence¹¹; and if the master of a ship navigates the ship in an area and in circumstances in which pilotage is compulsory for it by virtue of a pilotage direction without notifying the competent harbour authority¹² which gave the direction that he proposes to do so, he is guilty of an offence¹³.

1 As to the meaning of 'ship' see PARA 563 note 1.

2 As to the meaning of references to a ship navigating or being navigated see PARA 566 note 4.

3 As to the meaning of 'pilotage' see PARA 563.

4 As to the meaning of 'pilotage direction' see PARA 570.

5 As to the meaning of 'authorised pilot' see PARA 563. As to the rights of authorised pilots see PARA 580 et seq.

6 Pilotage Act 1987 s 15(1)(a).

7 As to the meaning of 'master' see PARA 571 note 3.

8 As to the meaning of 'pilotage exemption certificate' see PARA 571.

9 Pilotage Act 1987 s 15(1)(b).

10 ie as required by the Pilotage Act 1987 s 15(1) (see the text and notes 1-9): see s 15(2); and PARA 1232.

11 See the Pilotage Act 1987 s 15(2); and PARA 1232.

12 As to the meaning of 'competent harbour authority' see PARA 565.

13 See the Pilotage Act 1987 s 15(3); and PARA 1232.

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579. Liability for ships under compulsory pilotage.

The fact that a ship¹ is being navigated² in an area and in circumstances in which pilotage³ is compulsory⁴ for it does not affect any liability of the owner or master⁵ of the ship for any loss or damage caused by the ship or by the manner in which it is navigated⁶.

1 As to the meaning of 'ship' see PARA 563 note 1.

2 As to the meaning of references to a ship navigating or being navigated see PARA 566 note 4.

3 As to the meaning of 'pilotage' see PARA 563.

4 As to compulsory pilotage see PARA 578.

5 As to the meaning of 'master' see PARA 571 note 3.

6 Pilotage Act 1987 s 16. Section 16 is not intended to alter the meaning of the similar provision in the Pilotage Act 1913 (repealed) (see PARA 562) but to put it in more modern language; the Pilotage Act 1987 s 16 creates the relationship of master and servant between the compulsory pilot and the shipowner so as to make the shipowner liable to third parties: *Oceangas (Gibraltar) Ltd v Port of London Authority, The Cavendish* [1993] 2 Lloyd's Rep 292 (Port of London Authority held not to be vicariously liable in tort for the negligence of the pilot on board). See also *Esso Petroleum Co Ltd v Hall Russell & Co Ltd, The Esso Bernicia* [1989] AC 643, [1989] 1 All ER 37, HL (decided under the Pilotage Act 1983 s 15(1) (repealed)).

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B. RIGHTS OF PILOTS

580. Rights of authorised pilot to supersede unauthorised pilot.

An authorised pilot¹ may, within the harbour² in relation to which or a part of which he is authorised, supersede as the pilot³ of a ship⁴ any unauthorised person who has been employed to pilot it⁵.

If: (1) the master of any ship navigates it in any part of a harbour under the pilotage⁶ of an unauthorised person without first notifying the competent harbour authority that he proposes to do so, he is guilty of an offence⁷; (2) an unauthorised person pilots a ship within a harbour knowing that an authorised pilot has offered to pilot it, he is guilty of an offence⁸; (3) the master of a ship navigating within a harbour knowingly employs or continues to employ an unauthorised person to pilot the ship after an authorised pilot has offered to pilot it, he is guilty of an offence⁹.

1 As to the meaning of 'authorised pilot' see PARA 563.

2 As to the meaning of 'harbour' see PARA 565.

3 As to the meaning of 'pilot' see PARA 563.

4 As to the meaning of 'ship' see PARA 563 note 1.

5 Pilotage Act 1987 s 17(1). For these purposes, a person is an unauthorised person if he is neither an authorised pilot nor the holder of a pilotage exemption certificate in respect of the ship and the area in question; and any person, other than the master or one of the crew of a ship, who is on the bridge of the ship or in any other position from which the ship is navigated, whether on board or elsewhere, is deemed to be piloting the ship unless he proves otherwise: s 17(5). As to the meaning of 'master' see PARA 571 note 3; and as to the meaning of 'pilotage exemption certificate' see PARA 571. As to the meaning of references to a ship navigating or being navigated see PARA 566 note 4.

Section 17(1) and s 17(2)-(4) (see the text and notes 6-9) do not apply:

861 (1) to a ship which a person is piloting or ordered to pilot in a dockyard port, within the meaning of the Dockyard Ports Regulation Act 1865 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 613), in the course of his duties as a servant of the Crown (Pilotage Act 1987 s 17(7)(a)); or

862 (2) if the competent harbour authority has directed that the provisions of s 17(1)-(4) are not to apply to movements in its harbour or a specified part of its harbour for the purpose of changing a ship or a ship of a specified description from one mooring to another or of taking it into or out of any dock, to a ship or a ship of that description being moved in that harbour or that part for that purpose (s 17(7)(b));

but nothing in s 17(7)(a) (see head (1)) is to be construed as derogating from any immunity which affects such a ship as there mentioned apart from head (1) (s 17(7)). A competent harbour authority must not give a direction under s 17(7)(b) (see head (2)) unless the area in relation to which it will apply is either:

863 (a) an area in relation to which a byelaw under the Pilotage Act 1983 s 38 (repealed) (exemptions from compulsory pilotage for ships moving within harbours, docks etc) was in force immediately before 1 October 1988 (Pilotage Act 1987 s 17(8)(a)); or

864 (b) a closed dock, lock or other closed work which is not in a former pilotage district (s 17(8) (b)).

As to the meaning of 'competent harbour authority' see PARA 565; and as to the meaning of 'former pilotage district' see PARA 565 note 4.

6 As to the meaning of 'pilotage' see PARA 563.

7 See the Pilotage Act 1987 s 17(2); and PARA 1233. See also note 5.

8 See the Pilotage Act 1987 s 17(3); and PARA 1233. See also note 5.

9 See the Pilotage Act 1987 s 17(4); and PARA 1233. See also note 5.

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581. Declaration as to draught etc of ship.

A pilot¹ may require the master² of any ship³ which he is piloting to declare its draught of water, length and beam, and to provide him with such other information relating to the ship or its cargo as the pilot specifies and is necessary to enable him to carry out his duties as the pilot of the ship⁴.

The master of a ship must bring to the notice of any person who pilots the ship any defects in, and any matter peculiar to, the ship and its machinery and equipment of which the master knows and which might materially affect the navigation of the ship⁵.

Any master of a ship who:

- 407 (1) refuses to comply with such a request⁶; or
- 408 (2) makes a statement which is false in a material particular in answer to such a request, knowing it to be false or being reckless as to whether it is false, or fails without reasonable excuse to correct such a statement made by another person in answer to such a request, although himself knowing it to be false⁷; or
- 409 (3) without reasonable excuse fails to bring to the notice of any person who pilots the ship any defects in, and any matter peculiar to, the ship and its machinery and equipment of which the master knows and which might materially affect the navigation of the ship⁸,

is guilty of an offence⁹.

1 As to the meaning of 'pilot' see PARA 563.

2 As to the meaning of 'master' see PARA 571 note 3.

3 As to the meaning of 'ship' see PARA 563 note 1.

4 Pilotage Act 1987 s 18(1).

5 Pilotage Act 1987 s 18(2).

6 See the Pilotage Act 1987 s 18(3)(a); and PARA 1234. The text refers to a request made to the master of a ship in pursuance of s 18(1) (see the text and notes 1-4): see s 18(3)(a); and PARA 1234.

7 See the Pilotage Act 1987 s 18(3)(b); and PARA 1234.

8 See the Pilotage Act 1987 s 18(3)(c); and PARA 1234. The text refers to any person who without reasonable excuse contravenes s 18(2) (see the text and note 5): see s 18(3)(c); and PARA 1234.

9 See the Pilotage Act 1987 s 18(3); and PARA 1234.

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582. Authorised pilot not to be taken out of his area.

A master¹ of a ship² must not without reasonable excuse take an unauthorised pilot³ without his consent beyond the point up to which he has been engaged to pilot the ship⁴.

A person who contravenes this prohibition⁵ is guilty of an offence⁶.

1 As to the meaning of 'master' see PARA 571 note 3.

2 As to the meaning of 'ship' see PARA 563 note 1.

3 As to the meaning of 'authorised pilot' see PARA 563.

4 Pilotage Act 1987 s 19(1).

5 I.e. a person who contravenes the Pilotage Act 1987 s 19(1) (see the text and notes 1-4): see s 19(2); and PARA 1235.

6 See the Pilotage Act 1987 s 19(2); and PARA 1235.

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583. Facilities to be given for pilot boarding or leaving ship.

Where:

- 410 (1) the master¹ of a ship², which is navigating³ in an area in circumstances in which pilotage⁴ is compulsory⁵ for it but is not under the pilotage of an authorised pilot⁶ or a master or first mate possessing a pilotage exemption certificate⁷ in respect of the ship and the area, is offered the services of an authorised pilot⁸; or
- 411 (2) the master of a ship accepts the services of an authorised pilot in any other circumstances⁹,

he must facilitate the pilot boarding and subsequently leaving the ship¹⁰.

If the master of any ship without reasonable excuse contravenes these requirements¹¹, he is guilty of an offence¹².

1 As to the meaning of 'master' see PARA 571 note 3.

2 As to the meaning of 'ship' see PARA 563 note 1.

3 As to the meaning of references to a ship navigating or being navigated see PARA 566 note 4.

4 As to the meaning of 'pilotage' see PARA 563.

5 As to compulsory pilotage see PARA 578.

6 As to the meaning of 'authorised pilot' see PARA 563.

7 As to the meaning of 'pilotage exemption certificate' see PARA 571.

8 Pilotage Act 1987 s 20(1)(a).

9 Pilotage Act 1987 s 20(1)(b).

10 Pilotage Act 1987 s 20(1).

11 Ie if any person contravenes the Pilotage Act 1987 s 20(1) (see the text and notes 1-10): see s 20(2); and PARA 1236.

12 See the Pilotage Act 1987 s 20(2); and PARA 1236.

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C. LIMITATION OF LIABILITY

584. Limitation of liability in respect of pilots.

The liability of an authorised pilot¹ for any loss or damage caused by any act or omission of his while acting as such a pilot must not exceed £1,000 and the amount of the pilotage charges² in respect of the voyage during which the liability arose³. For these purposes, a person is deemed to be an authorised pilot notwithstanding that he is acting as a pilot of a ship⁴ navigating⁵ outside the area in relation to which he is authorised if:

- 412 (1) he is piloting the ship to that area from a place where pilots authorised for that harbour⁶ regularly board ships navigating to it⁷; or
- 413 (2) he is piloting the ship from that harbour to a place where such pilots regularly leave ships navigating from it⁸; and
- 414 (3) in either case, the ship is one in respect of which he is authorised⁹.

Where, without any personal act or omission by a competent harbour authority¹⁰, any loss or damage to any ship, to any property on board any ship or to any property or rights of any kind is caused by an authorised pilot employed by it, the authority is not liable to damages beyond the amount of £1,000 multiplied by the number of authorised pilots employed by it at the date when the loss or damage occurs¹¹. Where, without any such personal act or omission by a person providing pilotage services on behalf of a competent harbour authority (the 'agent'), any such loss or damage is caused by an authorised pilot employed by him, the agent is not liable to damages beyond the amount of £1,000 multiplied by the number of authorised pilots employed by him providing pilotage services for that authority at the date when the loss or damage occurs¹².

The limit of liability under these provisions¹³ applies to the whole of any losses and damages which may arise upon any one distinct occasion although such losses and damages may be sustained by more than one person¹⁴.

Where any proceedings are taken against any person (the 'defendant') for any act or omission in respect of which liability is limited as so provided¹⁵ and other claims are or appear likely to be made in respect of the same act or omission, the court¹⁶ in which the proceedings are taken may:

- 415 (a) determine the amount of the liability¹⁷;
- 416 (b) upon payment by the defendant of that amount into court, distribute that amount rateably among the claimants¹⁸;
- 417 (c) stay any proceedings pending in any other court in relation to the same matter¹⁹;
- 418 (d) proceed in such manner and subject to such requirements as the court thinks just²⁰;

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- 81. (i) as to making interested persons parties to the proceedings²¹;
- 82. (ii) as to the exclusion of any claimants whose claims are not made within a certain time²²;

- 83. (iii) as to requiring security from the defendant²³; and
 - 84. (iv) as to payment of any costs²⁴.
- 36

A competent harbour authority is not liable for any loss or damage caused by any act or omission of a pilot authorised by it²⁵ by virtue only of that authorisation²⁶.

- 1 As to the meaning of 'authorised pilot' see PARA 563.
- 2 As to pilotage charges see PARA 573. As to the meaning of 'pilotage' see PARA 563.
- 3 Pilotage Act 1987 s 22(1).
- 4 As to the meaning of 'ship' see PARA 563 note 1.
- 5 As to the meaning of references to a ship navigating or being navigated see PARA 566 note 4.
- 6 As to the meaning of 'harbour' see PARA 565.
- 7 Pilotage Act 1987 s 22(2)(a).
- 8 Pilotage Act 1987 s 22(2)(b).
- 9 Pilotage Act 1987 s 22(2)(c).
- 10 Ie any such personal act or omission as is mentioned in the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; Cmnd 7035) art 4 (see PARA 1046), implemented by the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I: see the Pilotage Act 1987 s 22(3) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 80(a)). As to the meaning of 'competent harbour authority' see PARA 565.
- 11 Pilotage Act 1987 s 22(3) (as amended: see note 10). Nothing in s 22(3) or s 22(4) (see the text and note 12) affects any liability which may be limited under the Merchant Shipping Act 1995 s 185 (see PARA 1042) or is excluded under s 186 (see PARA 1059): Pilotage Act 1987 s 22(7) (amended by the Merchant Shipping Act 1995 Sch 13 para 80(a)).
- 12 Pilotage Act 1987 s 22(4). See note 11.
- 13 Ie under the Pilotage Act 1987 s 22: see s 22(5).
- 14 Pilotage Act 1987 s 22(5).
- 15 Ie as provided by the Pilotage Act 1987 s 22: see s 22(6).
- 16 For these purposes, 'court' means the High Court: Pilotage Act 1987 s 22(9)(a).
- 17 Pilotage Act 1987 s 22(6)(a).
- 18 Pilotage Act 1987 s 22(6)(b).
- 19 Pilotage Act 1987 s 22(6)(c).
- 20 Pilotage Act 1987 s 22(6)(d).
- 21 Pilotage Act 1987 s 22(6)(d)(i).
- 22 Pilotage Act 1987 s 22(6)(d)(ii).
- 23 Pilotage Act 1987 s 22(6)(d)(iii).
- 24 Pilotage Act 1987 s 22(6)(d)(iv).
- 25 Ie under the Pilotage Act 1987 s 3 (see PARA 567): see s 22(8).
- 26 Pilotage Act 1987 s 22(8).

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D. DEEP SEA PILOTAGE

585. Deep sea pilotage certificates.

The Secretary of State¹ may authorise any body appearing to him to be competent to do so to grant certificates ('deep sea pilotage certificates') in respect of such part of the sea falling outside the harbour² of any competent harbour authority³ as he may specify⁴.

Any body for the time being so authorised by the Secretary of State⁵ may grant a deep sea pilotage certificate to any person on application by him if it is satisfied (by examination or by reference to such criteria as it may reasonably impose) that he is qualified to act as a pilot⁶ of a ship⁷ for the area in respect of which the body is so authorised by the Secretary of State⁸.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'harbour' see PARA 565.

3 As to the meaning of 'competent harbour authority' see PARA 565.

4 Pilotage Act 1987 s 23(1). Transitional provision was made in relation to any body which immediately before 1 October 1988 was authorised under the Pilotage Act 1983 (repealed) to grant deep sea pilotage certificates and in relation to any deep sea pilotage certificates which immediately before 1 October 1988 were granted under the Pilotage Act 1983: see the Pilotage Act 1987 s 32(3), Sch 1 para 6.

5 Ie authorised under the Pilotage Act 1987 s 23: see s 23(2).

6 As to the meaning of 'pilot' see PARA 563.

7 As to the meaning of 'ship' see PARA 563 note 1.

8 Pilotage Act 1987 s 23(2).

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586. Pilotage of vessels by deep-sea pilots in the North Sea and English Channel.

Member states which have coasts bordering the North Sea and the English Channel must take all necessary and appropriate measures to ensure that vessels availing themselves of the services of a deep-sea pilot for pilotage in those waters are provided with adequately qualified deep-sea pilots in possession of a certificate delivered by a competent authority of one of those member states certifying that such pilots are qualified to pilot vessels in those waters¹. Furthermore, each member state must take all necessary and appropriate measures to encourage vessels flying its national flag to avail themselves in those waters of the services of only those deep-sea pilots who are in possession of such a certificate or of an equivalent certificate delivered by another North Sea coastal state, when seeking the assistance of deep-sea pilots².

1 EC Council Directive 79/115 (OJ L33, 08.02.1979, p 32) art 1(1). As to deep sea pilotage certificates issued under the Pilotage Act 1987 see PARA 585.

2 EC Council Directive 79/115 (OJ L33, 08.02.1979, p 32) art 1(2).

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(2) TOWAGE

587. Ordinary obligations as to efficiency of tug.

In an ordinary contract of towage¹, the owner of the tug contracts that the tug is to be efficient for the purpose for which she is employed, and that her crew, tackle and equipment are to be equal to the work to be accomplished, in the weather and in the circumstances reasonably to be expected². There is a warranty implied in such a contract that at the outset the crew, tackle and equipment are equal to the work to be accomplished in circumstances reasonably to be expected³, and there is an implied obligation that competent skill and best endeavours are to be used in doing the work⁴. The grounding of a vessel in tow may in some circumstances constitute prima facie evidence either of the insufficient power of the tug, or of the inefficiency of her crew, tackle or equipment⁵.

There is no implied warranty that the tug is to be able to accomplish the work in all circumstances and at all hazards, and, if the contract is rendered impossible by force majeure, the obligation of the tug is discharged, but the occurrence of unforeseen difficulties does not in itself discharge the tug from her contract; but such difficulties may be of a nature to entitle the tug to salvage remuneration instead of mere towage remuneration⁶.

Where the contract is for the service of a specified tug, there is no implied warranty that she is fit for the purpose for which she was supplied⁷.

1 As to special conditions relieving the tug owner see PARA 590.

2 *The West Cock* [1911] P 208, 12 Asp MLC 57, CA (following *The Minnehaha* (1861) Lush 335 at 347, PC); *The Robert Dixon* (1879) 5 PD 54, 4 Asp MLC 246, CA; *The Undaunted* (1886) 11 PD 46, 5 Asp MLC 580. In a contract providing for different towage rates, the words 'not normal' in 'towage of steamers not normal' was held to refer to steamers and not to the towage: *The Princessa* [1946] P 79, [1945] 2 All ER 429n, CA. As to the position of the parties to a contract of towage where one or both vessels are involved in a collision see PARAS 803, 812. As to the jurisdiction of the Admiralty Court in actions for towage see the Supreme Court Act 1981 s 20(1)(a), (2)(k); and PARA 125.

3 *The Maréchal Suchet* [1911] P 1 at 12, 11 Asp MLC 553 at 556. See also PARA 812.

4 *The West Cock* [1911] P 208, 12 Asp MLC 57, CA (following *Steel v State Line Steamship Co* (1877) 3 App Cas 72 at 76, 86, 3 Asp MLC 516 at 517, 519, HL). See also *The Refrigerant* [1925] P 130, 16 Asp MLC 559 (cited in PARA 590 note 8).

5 *Preston Corpn v Biornstad, The Ratata* [1898] AC 513 at 517, 8 Asp MLC 427 at 429; *The Maréchal Suchet* [1911] P 1, 11 Asp MLC 553.

6 *The Minnehaha* (1861) Lush 335, PC; and see *The Hjemmet* (1880) 5 PD 227, 4 Asp MLC 274. See also *The Leon Blum* [1915] P 290, 13 Asp MLC 273, CA. As to salvage of a towed vessel see PARA 938; and as to impossibility of performance of contract see *The Salvador* (1909) 26 TLR 149; and **CONTRACT** vol 9(1) (Reissue) PARA 897 et seq.

7 *Robertson v Amazon Tug and Lighterage Co Ltd* (1881) 7 QBD 598, 4 Asp MLC 496, CA; but see *Fraser and White Ltd v Vernon* [1951] 2 Lloyd's Rep 175. See also *Point Anne Quarries Ltd v The MF Whalen* (1922) 39 TLR 37, 13 Ll L Rep 40, PC.

UPDATE

587 Ordinary obligations as to efficiency of tug

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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588. Ordinary mutual obligation to use due care.

Where an ordinary contract of towage¹ has been made, there is an implied agreement that each vessel will perform her duty in accomplishing it, that proper skill and diligence will be used on board of each, and that neither vessel will by neglect or misconduct create unnecessary risk to the other or increase any risk which may be incidental to the service undertaken². Where the breach by either vessel of this duty causes damage to the other, the vessel committing the breach will be liable to the other unless the sufferer has by misconduct or lack of skill on her own part contributed to the accident³, in which case the loss is divided in proportion to the degrees of fault⁴. This obligation continues until the work undertaken to be done is carried out to its conclusion⁵ or the contract is otherwise determined.

Where, in the course of carrying out such a contract, a tug fails to fulfil her obligations, and in consequence of the failure the services become of a salvage nature, the tug is not permitted to recover as for salvage⁶.

1 As to special conditions relieving the tug owner see PARA 590.

2 *The Julia* (1860) Lush 224 at 231, PC; cf *Smith v St Lawrence Tow-Boat Co* (1873) LR 5 PC 308 at 314, 2 Asp MLC 41 at 44; *Spaight v Tedcastle* (1881) 6 App Cas 217 at 220, 4 Asp MLC 406 at 407, HL; *The Altair* [1897] P 105, 8 Asp MLC 224; *The Valsesia* [1927] P 115, 17 Asp MLC 207; and see PARA 590. As to collision between tug and tow see PARA 812.

3 See the cases cited in note 2.

4 See PARA 800 et seq.

5 *Preston Corpn v Biornstad, The Ratata* [1898] AC 513 at 516, 8 Asp MLC 427 at 428, HL; *The Vigilant* [1921] P 312, 15 Asp MLC 337.

6 *The Minnehaha* (1861) Lush 335, PC; *The Robert Dixon* (1879) 5 PD 54, 4 Asp MLC 246, CA; *The Maréchal Suchet* [1911] P 1, 11 Asp MLC 553; and see *The Madras* [1898] P 90, 8 Asp MLC 397. Cf *The Leon Blum* [1915] P 290, 13 Asp MLC 273, CA (where the cargo owners were not exempted by a clause in the towage agreement of 'no salvage charges'); and PARA 938.

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589. Tug ordinarily under control of tow.

In an ordinary contract of towage¹, the tug is under the control of the tow, and must obey the directions given to her by those in charge of the tow². In such a case the tug is not liable if, by reason of these directions, the tow gets into a position of danger³, but, if without good cause these directions are disobeyed by the tug, and damage ensues to the tow, the tug is liable for any resulting damage and may forfeit her towage remuneration⁴. A tug is not obliged, however, to obey these directions if to do so would threaten the destruction of the vessel towed and endanger lives and property⁵. Although in general the tow should give directions to the tug, the question as to the relation between them is one of fact⁶. The tow is not bound on all occasions to give detailed directions to the tug⁷, and, where no directions are given by the tow, it is the duty of the tug to direct the course⁸. It is also always the duty of the tug, although she is controlled by the tow, to look out both for herself and the tow⁹.

1 As to special conditions relieving the tug owner see PARA 590.

2 *The Gipse King* (1847) 5 Notes of Cases 282 at 288; *The Christina* (1848) 3 Wm Rob 27 (affd sub nom *Petley v Catto*, *The Christina* 6 Moo PCC 371); *The Energy* (1870) LR 3 A & E 48; *The Robert Dixon* (1879) 5 PD 54, 4 Asp MLC 246, CA; *The Isca* (1886) 12 PD 34, 6 Asp MLC 63; *The Niobe* (1888) 13 PD 55, 6 Asp MLC 300. See also *Maridive VII v Key Singapore*, *The Key Singapore* [2004] EWHC 2227 (Comm), [2005] 1 All ER (Comm) 99, [2005] 1 Lloyd's Rep 91, where the court held that a review of past decisions emphasised the fact sensitive nature of any analysis of the relative responsibilities of tug and tow.

3 *The Robert Dixon* (1879) 5 PD 54, 4 Asp MLC 246, CA.

4 *The Christina* (1848) 3 Wm Rob 27 (affd sub nom *Petley v Catto*, *The Christina* 6 Moo PCC 371); *Spaight v Tedcastle* (1881) 6 App Cas 217, 4 Asp MLC 406, HL.

5 *The Christina* (1848) 3 Wm Rob 27; affd sub nom *Petley v Catto*, *The Christina* 6 Moo PCC 371.

6 *Devonshire (Owners) v Barge Leslie (Owners)* [1912] AC 634, 12 Asp MLC 210, HL.

7 *The Siquasi* (1880) 5 PD 241, 4 Asp MLC 383; *The Isca* (1886) 12 PD 34, 6 Asp MLC 63; *Trishna (Owners, Master and Crew) v Panther and Ericbank (Owners)*, *The Panther and The Ericbank* [1957] P 143, [1957] 1 All ER 641, [1957] 1 Lloyd's Rep 57. See further PARA 771.

8 *Smith v St Lawrence Tow-Boat Co* (1873) LR 5 PC 308, 2 Asp MLC 41.

9 *The Jane Bacon* (1878) 27 WR 35, CA.

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590. Special conditions relieving the tug.

It is competent for a tug by her contract¹ to relieve herself, during the period of towage², from any of the ordinary obligations³ incident to the contract of towage⁴. Where, however, there is any ambiguity in the terms of such relieving conditions, they are strictly construed against the party relying upon them⁵. Moreover, a tug owner may be precluded from relying on an exception clause by his own breach of the contract⁶. Where the cause of the damage complained of is the negligence of himself or his employees, the tug owner cannot rely upon conditions exempting him from liability, if negligence is not expressly excepted⁷, and the conditions exempting from liability must be read, unless clear words indicate the contrary intention, as applying only when the tug owner has fulfilled his duty as to the fitness of the tug when the towage service begins⁸. Although, as between the owner of the tug and the owner of the tow, the owner of the tug may by his contract be freed from liability for damage done by a vessel in tow, such a contract does not amount to an indemnity by the owner of the tow against any damages for which the tug has been held liable⁹.

1 As to ordinary obligations under a contract of towage see PARAS 587-589.

2 As to the commencement of towage under conditions agreed see *The Clan Colquhoun* [1936] P 153, 54 Ll L Rep 221, sub nom *Port of London Authority v SS Clan Colquhoun (Owners)* [1936] 1 All ER 429 (towage deemed to commence when row rope passed to each of two tugs). As to the meaning of 'when tug in a position to receive orders' in the United Kingdom Standard Towage Conditions see *The Uranienborg* [1936] P 21, 53 Ll L Rep 165 (merely being within hailing distance held insufficient); *Glen Line Ltd v WJ Guy & Sons, The Glenaffric* [1948] P 159, sub nom *WJ Guy & Son (a firm) v Glen Line Ltd* [1948] 1 All ER 245, CA (not necessary for ship to be ready to give orders); *Partafelagid Farmur v Grangemouth and Forth Towing Co Ltd* [1953] 2 Lloyd's Rep 699; *Blenheim (Owners) v Impetus (Owners), The Impetus* [1959] P 111, [1959] 2 All ER 354, [1959] 1 Lloyd's Rep 269 (not necessary for tug to be in position to carry out orders); *The Apollon, British Transport Docks Board v Apollon (Owners)* [1971] 2 All ER 1223, [1971] 1 Lloyd's Rep 476. As to liability under those conditions see *Great Western Rly Co v Royal Norwegian Government* [1945] 1 All ER 324, 78 Ll L Rep 152 (hirer liable for loss of life whilst towing); *Taylor v Geelong Harbour Trust Comrs and Howard Smith Ltd* [1962] 1 Lloyd's Rep 143 (Vict); *Knapp v Port of London Authority and Cory Bros Shipping Ltd* [1977] 1 Lloyd's Rep 662, DC. As to the commencement of 'hiring', and as to when a tug is in 'attendance for purpose of making fast', see *The Ramsden* [1943] P 46, 75 Ll L Rep 86. As to the meaning of 'towage or assistance services' see *The Baltyk* [1948] P 1, [1947] 2 All ER 560, 80 Ll L Rep 668.

3 Liability for death or personal injury resulting from negligence cannot be excluded or restricted in a contract of marine towage: see the Unfair Contract Terms Act 1977 ss 1(2), 2(1), Sch 1 para 2(a); and **CONTRACT** vol 9(1) (Reissue) PARA 828.

4 *The United Service* (1883) 9 PD 3, 5 Asp MLC 170, CA; *The Tasmania* (1888) 13 PD 110, 6 Asp MLC 305; *The Richmond* (1902) 19 TLR 29, DC; and see *The Luna* [1920] P 22, 15 Asp MLC 152 (contract of towage containing an indemnity clause held binding although the master of the tow could not read English). See also *The President Van Buren* (1924) 16 Asp MLC 444; *The Kite* [1933] P 154, 46 Ll L Rep 83.

5 *The Forfarshire* [1908] P 339, 11 Asp MLC 158; *The West Cock* [1911] P 208, 12 Asp MLC 57, CA, following *Waikato (Cargo Owners) v New Zealand Shipping Co* [1899] 1 QB 56 at 58, 8 Asp MLC 442, CA; *Rathbone Bros & Co v D MacIver Sons & Co* [1903] 2 KB 378 at 384, 9 Asp MLC 467 at 469, CA; *Elderslie Steamship Co v Borthwick* [1905] AC 93 at 96, 10 Asp MLC 24 at 26, HL; *Nelson Line (Liverpool) Ltd v James Nelson & Sons Ltd* [1908] AC 16 at 19, 20, 10 Asp MLC 581 at 583, HL. If tug owners desire to put upon the tow the liability for damage to the tug, they must do so in clear and unambiguous language: see *Emily Charlotte v Newona* (1920) 4 Ll L Rep 156 at 158 per Hill J.

6 See *The Albion, France, Fenwick and Tyne and Wear Co Ltd v Swan Hunter and Wigham Richardson Ltd* [1953] 2 All ER 679, sub nom *Swan Hunter and Wigham Richardson Ltd v France, Fenwick Tyne & Wear Co Ltd, The Albion* [1953] 1 WLR 1026, [1953] 2 Lloyd's Rep 82, CA.

7 *The Forfarshire* [1908] P 339, 11 Asp MLC 158.

8 *The Undaunted* (1886) 11 PD 46, 5 Asp MLC 580; *The West Cock* [1911] P 208, 12 Asp MLC 57, CA; and see the cases cited in note 5. See also *The Millwall* [1905] P 155, 10 Asp MLC 110, 113, CA; *The Adriatic* (1915) 85 LJP 12; *The Cap Palos* [1921] P 458, 15 Asp MLC 403, CA (where a clause giving the tug owner exemption from liability for negligence etc covered only default during the actual performance of the duties of the contract, and not an unjustified handing over of those obligations to someone else for performance). This principle was applied in *The Refrigerant* [1925] P 130, 16 Asp MLC 559 (where the master of the tug gave up trying to perform the contract in the way contemplated by the parties).

9 *The Richmond* (1902) 19 TLR 29, DC; and see *The Devonshire and The St Winifred* [1913] P 13, 12 Asp MLC 314. See also *The Carlton* [1931] P 186, 18 Asp MLC 240 (where an indemnity clause was held only to affect third party claims), approved in *The Lindenhall* [1945] P 8, CA; *Det Forenede Dampskibs Selskab v Barry Rly Co* (1919) 1 Ll L Rep 658 (where an indemnity clause was held not to cover damage done to the tug owner's property through the negligence of the tug). As to collision, and as to the requirements to avoid it, when under tow see PARAS 742-743, 771-772, 812-813; and as to the application of a contract of indemnity where several craft were in tow, and as to costs, see *The Riverman* [1928] P 33, 17 Asp MLC 344.

UPDATE

590 Special conditions relieving the tug

NOTE 4--See also *A Turtle Offshore SA v Superior Trading Inc* [2008] EWHC 3034 (Admlty), [2009] 1 Lloyd's Rep 177, [2008] All ER (D) 147 (Dec).

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7. SAFETY AND SECURITY AT SEA

(1) SAFETY AND HEALTH ON SHIPS

(i) In general

591. Safety and health on ships; power to make regulations.

The Secretary of State¹ may by regulations ('safety regulations')² make such provision as he considers appropriate for all or any of the following purposes³:

- 419 (1) for securing the safety of United Kingdom ships⁴ and persons on them, and for protecting the health of persons on United Kingdom ships⁵;
- 420 (2) for securing the safety of other ships and persons on them while they are within United Kingdom waters⁶ and for protecting the health of persons on ships other than United Kingdom ships while they are within United Kingdom waters⁷.

Safety regulations do not apply in relation to a qualifying foreign ship⁸ while it is exercising the right of innocent passage⁹ or the right of transit passage¹⁰ through straits used for international navigation¹¹ or in relation to persons on such a ship while it is exercising any such right¹²; but safety regulations do apply in relation to a qualifying foreign ship, and persons on such a ship, even though the ship is exercising the right of innocent passage or the right of transit passage through straits used for international navigation, to the extent that the safety regulations give effect to any provisions of an international agreement ratified by the United Kingdom so far as it relates to the safety of ships or persons on them or to the protection of the health of persons or ships¹³.

Regulations in pursuance of head (1) or head (2) above may make provision with respect to any of the following matters, that is to say¹⁴:

- 421 (a) the design, construction, maintenance, repair, alteration, inspection, surveying and marking of ships and their machinery and equipment¹⁵;
- 422 (b) the packaging, marking, loading, placing, moving, inspection, testing and measuring of cargo and anything on a ship which is not cargo, machinery or equipment¹⁶;
- 423 (c) the carrying out of any operation involving a ship¹⁷;
- 424 (d) the use of the machinery and equipment of a ship and of everything on a ship which is not cargo, machinery or equipment¹⁸;
- 425 (e) the manning of ships, including the employment on ships of persons qualified to attend to the health and safety of persons on the ships¹⁹;
- 426 (f) the arrangements for ensuring communication between persons in different parts of a ship and between persons in the ship and other persons²⁰;
- 427 (g) the access to, presence in and egress from a ship, and different parts of it, of persons of any description²¹;
- 428 (h) the ventilation, temperature and lighting of different parts of a ship²²;

- 429 (i) the steps to be taken to prevent or control noise, vibration and radiation in and from a ship and the emission in or from a ship of smoke, gas and dust²³;
- 430 (j) the steps to be taken to prevent, detect and deal with outbreaks of fire on a ship²⁴;
- 431 (k) the steps to be taken to prevent any collision involving a ship and in consequence of any collision involving a ship²⁵;
- 432 (l) the steps to be taken, in a case where a ship is in distress or stranded or wrecked, for the purpose of saving the ship and its machinery, equipment and cargo and the lives of persons on or from the ship, including the steps to be taken by other persons for giving assistance in such a case²⁶;
- 433 (m) the removal, by jettisoning or otherwise, of its equipment and of other things from a ship for the purpose of avoiding, removing or reducing danger to persons or property²⁷;
- 434 (n) the steps to be taken, in a case where danger of any kind occurs or is suspected on a ship, for removing or reducing the danger and for warning persons who are not on the ship of the danger or suspected danger²⁸;
- 435 (o) the making of records and the keeping of documents relating to ships and the keeping and use on a ship of information to facilitate the navigation of the ship²⁹;
- 436 (p) the keeping of registers and the issue of certificates in cases for which registration or a certificate is required by virtue of the regulations³⁰; and
- 437 (q) the furnishing of information³¹;

but the mention of specific matters in heads (a) to (q) above is not to be construed as restricting the generality of the power conferred by head (1) or head (2) above³².

The power to make regulations conferred by head (1) or head (2) above extends also to the making of regulations for the prevention of collisions between seaplanes on the surface of water and between ships and seaplanes³³.

Safety regulations:

- 438 (i) may make provision in terms of approvals given by the Secretary of State or another person and in terms of any document which the Secretary of State or another person considers relevant from time to time³⁴;
- 439 (ii) may provide for the cancellation of an approval given in pursuance of the regulations and for the alteration of the terms of such an approval³⁵; and
- 440 (iii) must provide for any approval in pursuance of the regulations to be given in writing and to specify the date on which it takes effect and the conditions, if any, on which it is given³⁶.

Safety regulations may provide³⁷ for the granting by the Secretary of State or another person, on such terms, if any, as the Secretary of State or other person may specify, of exemptions from specified provisions of the regulations for classes of cases or individual cases and for the alteration or cancellation of exemptions granted in pursuance of the regulations³⁸.

Safety regulations may provide:

- 441 (A) that in such cases as are prescribed by the regulations a ship is liable to be detained and that the statutory provisions relating to enforcing the detention of a ship³⁹ are to have effect, with such modifications, if any, as are prescribed by the regulations, in relation to the ship⁴⁰;
- 442 (B) that a contravention⁴¹ of the regulations is to be an offence punishable on conviction on indictment by imprisonment for a term not exceeding two years and a fine and on summary conviction by a fine not exceeding the statutory maximum⁴²;

- 443 (c) that any such contravention is to be an offence punishable only on summary conviction by a maximum fine of an amount not exceeding level 5 on the standard scale⁴³ or such less amount as is prescribed by the regulations⁴⁴;
- 444 (D) that, in such cases as are prescribed by the regulations, such persons as are so prescribed are each to be guilty of an offence created by virtue of head (B) or (C) above⁴⁵;
- 445 (E) that, notwithstanding anything in head (B) or (C) above, a person convicted summarily of an offence under the regulations of a kind which is stated by the regulations to correspond to an offence which is triable either summarily or on indictment under an enactment specified in the regulations which authorises or authorised a fine on summary conviction of a maximum amount exceeding the statutory maximum is to be liable to a fine not exceeding that maximum amount⁴⁶.

Safety regulations which make provision in respect of the prohibition of smoking⁴⁷ on any ship (the 'smoking provisions') may include provision⁴⁸:

- 446 (aa) for the appointment by the Secretary of State of persons to enforce the smoking provisions (whether in respect of ships generally or for any particular case or purpose), and for the removal of any person so appointed⁴⁹;
- 447 (bb) for such persons⁵⁰ to have the powers of such surveyors for the purposes of their enforcement functions⁵¹;
- 448 (cc) for any such persons to have, for the purposes of their enforcement functions, powers corresponding to those which authorised officers have under the Health Act 2006⁵²;
- 449 (dd) in relation to an offence of smoking in a place where smoking is prohibited under the smoking provisions, for purposes corresponding to those of the Health Act 2006⁵³ which provide for the giving by authorised officers of penalty notices in respect of such an offence⁵⁴.

1 As to the Secretary of State see PARA 38.

2 In the Merchant Shipping Act 1995, 'safety regulations' means regulations under s 85: see s 313(1). As to supplementary provisions relating to the making of safety regulations see PARA 592; and as to all safety regulations made (or, as the case may be, having effect as if so made) see PARA 593 et seq. A breach of safety regulations made under the Merchant Shipping Act 1995 s 85 gives rise to a civil right of action: see *Ziemniak v ETPM Deep Sea Ltd*[2003] EWCA Civ 636, [2003] 2 All ER (Comm) 283, [2003] 2 Lloyd's Rep 214.

As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41; and as to the Secretary of State's power to make regulations prescribing fees to be charged in respect of the issue or recording of any certificate, licence or other document see PARA 62.

3 Merchant Shipping Act 1995 s 85(1).

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 85 or, as the case may be, s 86 (see PARA 592) and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 85 or, as the case may be, s 86 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 46 et seq.

4 For these purposes, 'United Kingdom ship' means a ship which either is registered in the United Kingdom or is not registered under the law of any country but is wholly owned by persons each of whom is a British citizen, a British overseas territories citizen or a British Overseas citizen or a body corporate which is established under the law of a part of the United Kingdom and has its principal place of business in the United Kingdom: Merchant Shipping Act 1995 s 85(2) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). As to the meaning of 'British citizen' see PARA 19 note 7; as to the meaning of 'British overseas territories citizen' see PARA 19 note 8; as to the meaning of 'British Overseas citizen' see PARA 19 note 9; as to the meaning of 'registered' see PARA 254 note 2; as to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

- 5 Merchant Shipping Act 1995 s 85(1)(a).
- 6 As to the meaning of 'United Kingdom waters' see PARA 48 note 10.
- 7 Merchant Shipping Act 1995 s 85(1)(b) (substituted by the Merchant Shipping and Maritime Security Act 1995 s 8(1), (2)).
- 8 As to the meaning of 'qualifying foreign ship' see PARA 19.
- 9 As to the meaning of 'right of innocent passage' see PARA 68 note 10.
- 10 As to the meaning of 'right of transit passage' see PARA 68 note 11.
- 11 As to the meaning of 'straits used for international navigation' see PARA 68 note 12.
- 12 Merchant Shipping Act 1995 s 85(1A) (s 85(1A), (1B) added by the Merchant Shipping and Maritime Security Act 1997 s 8(1), (3)).
- 13 Merchant Shipping Act 1995 s 85(1B) (as added: see note 12).
- 14 Merchant Shipping Act 1995 s 85(3) (amended by the Merchant Shipping and Maritime Security Act 1997 ss 8(1), (4), 29(2), Sch 7 Pt I). Nothing in the Merchant Shipping Act 1995 s 85(3) (see also the text and notes 15-32) or in s 85(4)-(6) (see the text and notes 33-38) is to be construed as prejudicing the generality of s 85(1) (see the text and notes 1-7): see s 86(3).
- 15 Merchant Shipping Act 1995 s 85(3)(a). See note 14.
- 16 Merchant Shipping Act 1995 s 85(3)(b). See note 14.
- 17 Merchant Shipping Act 1995 s 85(3)(c). See note 14.
- 18 Merchant Shipping Act 1995 s 85(3)(d). See note 14.
- 19 Merchant Shipping Act 1995 s 85(3)(e). See note 14.
- 20 Merchant Shipping Act 1995 s 85(3)(f). See note 14.
- 21 Merchant Shipping Act 1995 s 85(3)(g). See note 14.
- 22 Merchant Shipping Act 1995 s 85(3)(h). See note 14.
- 23 Merchant Shipping Act 1995 s 85(3)(i). See note 14.
- 24 Merchant Shipping Act 1995 s 85(3)(j). See note 14.
- 25 Merchant Shipping Act 1995 s 85(3)(k). See note 14.
- 26 Merchant Shipping Act 1995 s 85(3)(l). See note 14.
- 27 Merchant Shipping Act 1995 s 85(3)(m). See note 14.
- 28 Merchant Shipping Act 1995 s 85(3)(n). See note 14.
- 29 Merchant Shipping Act 1995 s 85(3)(o). See note 14.
- 30 Merchant Shipping Act 1995 s 85(3)(p). See note 14.
- 31 Merchant Shipping Act 1995 s 85(3)(q). See note 14.
- 32 Merchant Shipping Act 1995 s 85(3) (as amended: see note 14). See note 14.
- 33 Merchant Shipping Act 1995 s 85(4) (amended by the Merchant Shipping and Maritime Security Act 1997 s 8(1), (5)). The Merchant Shipping Act 1995 s 85(3)(k) (see head (k) in the text), s 85(5)-(7) (see the text and notes 34-46) and s 86(1) (see PARA 592) have effect accordingly: see s 85(4) (as so amended). See note 14.
- 34 Merchant Shipping Act 1995 s 85(5)(a). See notes 14, 33.

- 35 Merchant Shipping Act 1995 s 85(5)(b). See notes 14, 33.
- 36 Merchant Shipping Act 1995 s 85(5)(c). See notes 14, 33.
- 37 Ie without prejudice to the Merchant Shipping Act 1995 s 86(1)(b) (see PARA 592): see s 85(6). See notes 14, 33.
- 38 Merchant Shipping Act 1995 s 85(6). See notes 14, 33.
- 39 Ie the Merchant Shipping Act 1995 s 284 (see PARA 1253): see s 85(7)(a). See note 33.
- 40 Merchant Shipping Act 1995 s 85(7)(a). See note 33.
- 41 As to the meaning of 'contravention' see PARA 50 note 3.
- 42 Merchant Shipping Act 1995 s 85(7)(b). See note 33. As to the meaning of 'statutory maximum' see PARA 1099.
- 43 As to the meaning of 'standard scale' see PARA 1099.
- 44 Merchant Shipping Act 1995 s 85(7)(c). See note 33.
- 45 Merchant Shipping Act 1995 s 85(7)(d). See note 33.
- 46 Merchant Shipping Act 1995 s 85(7)(e). See note 33.
- 47 For these purposes, 'smoking' has the same meaning as in the Health Act 2006 Pt 1 Ch 1 (ss 1-12) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 250 et seq): Merchant Shipping Act 1995 s 85(8) (added by the Health Act 2006 s 5(4)).
- 48 Merchant Shipping Act 1995 s 85(8) (as added: see note 47).
- 49 Merchant Shipping Act 1995 s 85(8)(a) (as added: see note 47).
- 50 Ie if they are not surveyors of ships appointed under the Merchant Shipping Act 1995 s 256 (see PARA 46): see s 85(8)(b) (as added: see note 47). As to the meaning of 'surveyor of ships' under the Merchant Shipping Act 1995 see PARA 46 note 13.
- 51 Merchant Shipping Act 1995 s 85(8)(b) (as added: see note 47).
- 52 Merchant Shipping Act 1995 s 85(8)(c) (as added: see note 47). The text refers to powers which authorised officers have under the Health Act 2006 s 10, Sch 2 paras 2(b)-(e), 3-4 (as read with Sch 2 paras 5 and 9), which confer powers of entry, etc, on authorised officers of enforcement authorities in relation to the enforcement of the provisions of the Health Act 2006 in relation to smoking: see the Merchant Shipping Act 1995 s 85(8)(c) (as so added).
- 53 Ie corresponding to those of the Health Act 2006 s 9, Sch 1 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 256): see the Merchant Shipping Act 1995 s 85(8)(d) (as added: see note 47).
- 54 Merchant Shipping Act 1995 s 85(8)(d) (as added: see note 47).

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592. Supplementary provisions.

Safety regulations¹ may²:

- 450 (1) make different provision for different circumstances and in particular make provision for an individual case³;
- 451 (2) be made so as to apply only in such circumstances as are prescribed by the regulations⁴;
- 452 (3) be made so as to extend outside the United Kingdom⁵;
- 453 (4) contain such incidental, supplemental and transitional provisions as the Secretary of State⁶ considers appropriate⁷;
- 454 (5) make provision for compensation to be paid, where a signal is used or displayed otherwise than in accordance with the regulations, for any expense or loss caused in consequence of the signal's being taken for a signal of distress⁸.

The Secretary of State may by regulations:

- 455 (a) make such repeals or other modifications of provisions of the Merchant Shipping Acts 1894 to 1977 re-enacted in the Merchant Shipping Act 1995, and of any instruments made under those Acts as he considers appropriate in consequence or in anticipation of the making of safety regulations⁹;
- 456 (b) make such repeals or other modifications of provisions of any enactment passed and any instrument made before 4 April 1979 as he considers appropriate in connection with any modification made or to be made in pursuance of head (a) above¹⁰;
- 457 (c) provide for anything done under a provision repealed or otherwise modified by virtue of either head (a) or head (b) above to have effect as if done under safety regulations and make such other transitional provision and such incidental and supplemental provision as he considers appropriate in connection with any modification made by virtue of either head (a) or head (b) above¹¹.

Where the Secretary of State proposes to make safety regulations or he or another person proposes to give an approval in pursuance of safety regulations, it is the duty of the Secretary of State or other person, before he gives effect to the proposal, to consult such persons in the United Kingdom, if any, as he considers will be affected by the proposal¹².

1 As to the meaning of 'safety regulations' see PARA 591.

2 Merchant Shipping Act 1995 s 86(1). Nothing in s 86(1) is to be construed as prejudicing the generality of s 85(1) (see PARA 591): s 86(3).

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 85 (see PARA 591) or, as the case may be, s 86 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 85 or, as the case may be, s 86 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 46 et seq.

3 Merchant Shipping Act 1995 s 86(1)(a). See note 2.

4 Merchant Shipping Act 1995 s 86(1)(b). See note 2.

5 Merchant Shipping Act 1995 s 86(1)(c). See note 2. As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 As to the Secretary of State see PARA 38.

7 Merchant Shipping Act 1995 s 86(1)(d). See note 2.

8 Merchant Shipping Act 1995 s 86(1)(e). Any compensation falling to be paid by virtue of the regulations under s 86(1)(e) may, without prejudice to any other remedy, be recovered in the same manner as salvage: see s 86(1). See note 2. As to salvage generally see PARAS 113 et seq, 876 et seq.

9 Merchant Shipping Act 1995 s 86(2)(a). Notwithstanding the repeal by the Merchant Shipping (Registration etc) Act 1993 of the Merchant Shipping Act 1894 s 427, the Merchant Shipping (Safety Convention) Act 1949 s 3, the Merchant Shipping (Safety Convention) Act 1949 s 21, the Merchant Shipping Act 1964 s 2, the Anchors and Chain Cables Act 1967 s 1, and the Merchant Shipping (Safety Convention) Act 1977 s 2, instruments in force before the repeal under those provisions continued in force until superseded by safety regulations, subject to exemptions from any requirements of the rules for life-saving appliances or the radio rules so saved as the Secretary of State thought fit: see the Merchant Shipping Act 1995 s 314(3), Sch 14 para 7.

10 Merchant Shipping Act 1995 s 86(2)(b).

11 Merchant Shipping Act 1995 s 86(2)(c).

12 Merchant Shipping Act 1995 s 86(4).

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593. Delegation of type approval.

Notwithstanding any provision, howsoever worded, in any regulations¹:

- 458 (1) having effect as if made under the powers to make safety regulations under the Merchant Shipping Act 1995² for securing the safety of United Kingdom ships and persons on them and for protecting the health of persons on United Kingdom ships, and for securing the safety of other ships and persons on them while they are within United Kingdom waters and for protecting the health of persons on ships other than United Kingdom ships while they are within United Kingdom waters³; or
- 459 (2) made under the Merchant Shipping (Prevention of Oil Pollution) Order 1983⁴,

requiring the type approval of equipment or arrangements required by any such regulations by the Secretary of State⁵, any of the equipment or arrangements may be of a type approved⁶ in relation to that equipment or arrangement⁷; and any such equipment or arrangement which is of a type approved by any of such persons is to be considered to be approved for the purposes of a provision mentioned in head (1) or head (2) above⁸.

Any approval so given⁹ must be given in writing and must specify when it is to come into force and the conditions, if any, on which it is given¹⁰.

1 Merchant Shipping (Delegation of Type Approval) Regulations 1996, SI 1996/147, reg 2(1).

2 le under the Merchant Shipping Act 1995 s 85(1)(a) or s 85(1)(b) (see PARA 591): see the Merchant Shipping (Delegation of Type Approval) Regulations 1996, SI 1996/147, reg 2(1)(a)(i).

3 Merchant Shipping (Delegation of Type Approval) Regulations 1996, SI 1996/147, reg 2(1)(a)(i).

4 Merchant Shipping (Delegation of Type Approval) Regulations 1996, SI 1996/147, reg 2(1)(a)(ii). The text refers to regulations made under the Merchant Shipping (Prevention of Oil Pollution) Order 1983, SI 1983/1106 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 365 et seq): see the Merchant Shipping (Delegation of Type Approval) Regulations 1996, SI 1996/147, reg 2(1)(a)(ii).

5 As to the Secretary of State see PARA 38.

6 le approved by any of the persons specified in Merchant Shipping Notice 1734(M+F) (Type Approval of Marine Equipment (EC Notified Bodies)) or 1735(M+F) (Type Approval of Marine Equipment (UK Nominated Bodies)): see the Merchant Shipping (Delegation of Type Approval) Regulations 1996, SI 1996/147, reg 2(1)(a). For these purposes, 'Merchant Shipping Notice' means a Notice described as such, issued by the Maritime and Coastguard Agency (an executive agency of the Department for Transport); and reference to Merchant Shipping Notice 1645 (cancelled) (superseded by 1734(M+F) and by 1735(M+F), which both amend 1688 (cancelled) and 1714(M+F)) includes reference to any Merchant Shipping Notice amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time: see the Merchant Shipping (Delegation of Type Approval) Regulations 1996, SI 1996/147, reg 1(2)(ii), (iii). As to the Maritime and Coastguard Agency see PARA 56.

7 Merchant Shipping (Delegation of Type Approval) Regulations 1996, SI 1996/147, reg 2(1)(a).

8 Merchant Shipping (Delegation of Type Approval) Regulations 1996, SI 1996/147, reg 2(1)(b).

9 le pursuant to the Merchant Shipping (Delegation of Type Approval) Regulations 1996, SI 1996/147, reg 2: see reg 2(2).

10 Merchant Shipping (Delegation of Type Approval) Regulations 1996, SI 1996/147, reg 2(2).

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594. Training in safety matters for skippers and seamen in United Kingdom fishing vessels.

As from a day to be appointed¹, the Secretary of State may make regulations² for securing that the skipper of and every seaman³ employed or engaged in a United Kingdom fishing vessel⁴ is trained in safety matters⁵.

The regulations may provide that, if a person goes to sea on a fishing vessel in contravention⁶ of a requirement of the regulations⁷:

- 460 (1) he commits an offence and is liable on summary conviction to a fine not exceeding level 2, or, if he is the skipper or an owner of the vessel, level 5, on the standard scale⁸; and
- 461 (2) the skipper and each owner of the vessel is, except in respect of a contravention by himself, liable on summary conviction to a fine not exceeding level 5 on the standard scale⁹.

1 The Merchant Shipping Act 1995 s 127 does not have effect until the Secretary of State by order appoints a day for s 127 to come into force: see s 314(3), Sch 14 para 5(1), (2); and PARA 16 note 1. At the date at which this volume states the law, no such order had been made. As to the Secretary of State see PARA 38.

2 Regulations under the Merchant Shipping Act 1995 s 127 may make different provision for different cases, or descriptions of case, including different provisions for different descriptions of vessel or according to the circumstances of operation of a vessel: s 127(3). At the date at which this volume states the law, no such regulations had been made under s 127 and none have effect as if so made. However, by virtue of the Interpretation Act 1978 s 17(2)(b), the Fishing Vessels (Safety Training) Regulations 1989, SI 1989/126 (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 977) have effect as if made under the Merchant Shipping Act 1995 ss 85, 86 (see PARAS 591, 592). As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41

3 As to the meaning of 'seaman' see PARA 424.

4 As to the meaning of 'fishing vessel' see PARA 230 note 9; and as to the meaning of 'United Kingdom fishing vessel' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

5 Merchant Shipping Act 1995 s 127(1). See note 1.

6 As to the meaning of 'contravention' see PARA 50 note 3.

7 Merchant Shipping Act 1995 s 127(2). See notes 1, 2.

8 Merchant Shipping Act 1995 s 127(2)(a). See notes 1, 2. As to the meaning of 'standard scale' see PARA 1099.

9 Merchant Shipping Act 1995 s 127(2)(b). See notes 1, 2.

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(ii) Submersible Apparatus

595. Safety of submersible and supporting apparatus.

The Secretary of State¹ may make regulations²:

- 462 (1) for the safety of submersible and supporting apparatus³;
- 463 (2) for the prevention of accidents in or near submersible or supporting apparatus⁴;
- 464 (3) for the safety, health and welfare of persons on or in submersible and supporting apparatus⁵;
- 465 (4) for prohibiting or otherwise restricting the operation of any submersible apparatus except in accordance with the conditions of a licence granted under the regulations⁶; and
- 466 (5) for the registration of submersible apparatus⁷.

Such regulations⁸ may:

- 467 (a) provide for their operation anywhere outside the United Kingdom and for their application to persons, whether or not Commonwealth citizens⁹, and to companies, whether or not incorporated under the law of any part of the United Kingdom¹⁰;
- 468 (b) provide that in any proceedings for an offence under the regulations an averment in any process of the fact that anything was done or situated within United Kingdom waters is, until the contrary is proved, sufficient evidence of that fact as stated in the averment¹¹;
- 469 (c) provide that proceedings for an offence under the regulations may be taken, and the offence be treated for all incidental purposes as having been committed, in any place in the United Kingdom¹²;
- 470 (d) provide for any provisions of Part XI of the Merchant Shipping Act 1995¹³ relating to inquiries and investigations into marine accidents to apply, with such modifications as may be specified¹⁴, in relation to accidents involving any submersible apparatus which is not a ship as they apply to ships¹⁵;
- 471 (e) provide that specified provisions of any enactment¹⁶ are, in such circumstances as may be prescribed¹⁷, not to have effect in relation to such class or description of, or to such particular, submersible or supporting apparatus as may be prescribed¹⁸;
- 472 (f) make different provision for different classes or descriptions of submersible or supporting apparatus and for different circumstances¹⁹;
- 473 (g) contain such supplemental and incidental provisions as appear to the Secretary of State to be expedient²⁰.

1 As to the Secretary of State see PARA 38.

2 Merchant Shipping Act 1995 s 88(2). At the date at which this volume states the law, the Merchant Shipping (Diving Safety) Regulations 2002, SI 2002/1587, had been made under the Merchant Shipping Act

1995 s 88(2) and, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Registration of Submersible Craft) Regulations 1976, SI 1976/940 (amended by SI 1979/1519; SI 1987/306); the Merchant Shipping (Submersible Craft Construction and Survey) Regulations 1981, SI 1981/1098 (amended by the Criminal Justice Act 1988 s 51; and by SI 1987/306); and the Merchant Shipping (Submersible Craft Operations) Regulations 1987, SI 1987/311 (amended by the Criminal Justice Act 1988 s 51; and by SI 1987/306) have effect as if so made. As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41; and as to the Secretary of State's power to make regulations prescribing fees to be charged in respect of the issue or recording of any certificate, licence or other document see PARA 62.

3 Merchant Shipping Act 1995 s 88(2)(a). The provisions of s 88 apply to any submersible or supporting apparatus operated within United Kingdom waters or launched or operated from, or comprising, a United Kingdom ship: s 88(1). For these purposes, 'submersible apparatus' means any apparatus used, or designed for use, in supporting human life on or under the bed of any waters or elsewhere under the surface of any waters; 'supporting apparatus' means any apparatus used, or designed for use, in connection with the operation of any submersible apparatus; and 'apparatus' includes any vessel, vehicle or hovercraft, any structure, any diving plant or equipment and any other form of equipment: s 88(4). As to the meaning of 'United Kingdom waters' see PARA 48 note 10. As to the meaning of 'United Kingdom ship' see PARA 230; as to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3. As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 88 and Sch 2 (see PARAS 596-598) and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 88 and Sch 2 apply are carried on so as to involve serious personal injury or serious pollution, see PARA 46 et seq.

4 Merchant Shipping Act 1995 s 88(2)(b). See note 3.

5 Merchant Shipping Act 1995 s 88(2)(c). See note 3.

6 Merchant Shipping Act 1995 s 88(2)(d). See note 3.

7 Merchant Shipping Act 1995 s 88(2)(e). See note 3.

8 The regulations made under the Merchant Shipping Act 1995 s 88 (see the text and notes 1-7): see s 88(3), Sch 2 para 1(1). Nothing in Sch 2 is to be taken to prejudice the generality of s 88: Sch 2 para 1(2). As to the regulations so made see note 2.

9 As to who are Commonwealth citizens see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 11.

10 Merchant Shipping Act 1995 Sch 2 para 5(a). See note 8.

11 Merchant Shipping Act 1995 Sch 2 para 5(b). Head (b) in the text does not apply to proceedings to which Sch 2 para 5(c) applies (see Sch 2 para 5(b)); and Sch 2 para 5(c) allows for regulations to provide that, in any proceedings in Scotland for an offence under the regulations, a statement in any complaint or indictment of any such fact as is mentioned in head (b) in the text is, until the contrary is proved, sufficient evidence of the fact as so stated (see Sch 2 para 5(c)). See note 8.

12 Merchant Shipping Act 1995 Sch 2 para 5(d). See note 8.

13 The Merchant Shipping Act 1995 Pt XI (ss 267-273) (see PARA 844 et seq): see Sch 2 para 5(e). See note 8.

14 For the purposes of the Merchant Shipping Act 1995 s 88, 'specified' means specified in regulations made by the Secretary of State for the purposes of s 88 (see the text and notes 1-7): s 88(4).

15 Merchant Shipping Act 1995 Sch 2 para 5(e). See note 8.

16 The other than the Merchant Shipping Act 1995 s 88 and Sch 2: see Sch 2 para 5(f). See note 8.

17 For these purposes, 'prescribed' means prescribed by regulations: Merchant Shipping Act 1995 Sch 2 para 1(1).

18 Merchant Shipping Act 1995 Sch 2 para 5(f). See note 8.

19 Merchant Shipping Act 1995 Sch 2 para 5(g). See note 8.

20 Merchant Shipping Act 1995 Sch 2 para 5(h). See note 8.

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596. Registration of submersible apparatus.

Regulations¹ relating to the registration of submersible apparatus² may make provision:

- 474 (1) for all matters relevant to the maintenance of a register of submersible apparatus³;
- 475 (2) without prejudice to head (1) above, for the period for which any registration or exemption is to remain effective without renewal, the alteration or cancellation in any prescribed⁴ circumstances of registration or exemption or of any conditions attached thereto, the person by whom and manner in which applications in connection with any registration or exemption are to be made, and information and evidence to be furnished in connection with any such application⁵;
- 476 (3) for the marking or other means of identification of any submersible apparatus⁶;
- 477 (4) for the issue of certificates of registration or exemption, and the custody, surrender, production or display of the certificates or copies of them⁷;
- 478 (5) for matters arising out of the termination of any registration or exemption, or any conditions attached thereto⁸.

1 For the purposes of the Merchant Shipping Act 1995 s 88(3), Sch 2, 'regulations' means regulations made under s 88 (see PARA 595): see Sch 2 para 1(1). Nothing in Sch 2 is to be taken to prejudice the generality of s 88: Sch 2 para 1(2). As to the regulations so made see PARA 595 note 2. As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 88 and Sch 2 (see PARAS 595, 597, 598) and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 88 and Sch 2 apply are carried on so as to involve serious personal injury or serious pollution, see PARA 46 et seq.

2 I.e regulations made by virtue of the Merchant Shipping Act 1995 s 88(2)(e) (see PARA 595): see Sch 2 para 2. As to the meaning of 'submersible apparatus' see PARA 595 note 3.

3 Merchant Shipping Act 1995 Sch 2 para 2(a).

4 For these purposes, 'prescribed' means prescribed by regulations: Merchant Shipping Act 1995 Sch 2 para 1(1).

5 Merchant Shipping Act 1995 Sch 2 para 2(b).

6 Merchant Shipping Act 1995 Sch 2 para 2(c).

7 Merchant Shipping Act 1995 Sch 2 para 2(d).

8 Merchant Shipping Act 1995 Sch 2 para 2(e).

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597. Offences.

Regulations¹ may:

- 479 (1) provide for the creation of offences and for their punishment on summary conviction or on conviction on indictment²; and
- 480 (2) afford, in respect of any description of offence created by the regulations, such defence, if any, as may be prescribed³.

The punishment for an offence created by regulations is:

- 481 (a) on summary conviction, a fine not exceeding the statutory maximum⁴;
- 482 (b) on conviction on indictment, imprisonment for a term not exceeding two years or a fine, or both⁵;

but this is without prejudice to any further restriction contained in the regulations on the punishments which can be awarded and without prejudice to the exclusion by the regulations of proceedings on indictment⁶.

1 For the purposes of the Merchant Shipping Act 1995 s 88(3), Sch 2, 'regulations' means regulations made under s 88 (see PARA 595): see Sch 2 para 1(1). Nothing in Sch 2 is to be taken to prejudice the generality of s 88: Sch 2 para 1(2). As to the regulations so made see PARA 595 note 2. As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 88 and Sch 2 (see PARAS 595, 596, 598) and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 88 and Sch 2 apply are carried on so as to involve serious personal injury or serious pollution, see PARA 46 et seq.

2 Merchant Shipping Act 1995 Sch 2 para 3(1)(a).

3 Merchant Shipping Act 1995 Sch 2 para 3(1)(b). As to the meaning of 'prescribed' see PARA 595 note 17.

4 Merchant Shipping Act 1995 Sch 2 para 3(2)(a). As to the meaning of 'statutory maximum' see PARA 1099.

5 Merchant Shipping Act 1995 Sch 2 para 3(2)(b).

6 Merchant Shipping Act 1995 Sch 2 para 3(2).

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598. Exemptions from regulations.

The operation of any regulations¹ may be excluded in whole or in part in relation to any class or description of submersible² or supporting apparatus³ by regulations, or in relation to any particular apparatus by the direction of the Secretary of State⁴ given in such manner as he thinks appropriate⁵.

Any such exemption or exclusion by regulations or by directions of the Secretary of State⁶ may be made subject to the imposition of conditions specified⁷ by the regulations or directions⁸. Where⁹ a person is so exempted or excluded from the requirements of the provisions of regulations but subject to a condition, and the condition is not observed, the exemption or exclusion does not have effect, and accordingly proceedings may be brought in respect of any offence created by the regulations¹⁰.

1 For the purposes of the Merchant Shipping Act 1995 s 88(3), Sch 2, 'regulations' means regulations made under s 88 (see PARA 595): see Sch 2 para 1(1). Nothing in Sch 2 is to be taken to prejudice the generality of s 88: Sch 2 para 1(2). As to the regulations so made see PARA 595 note 2. As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 88 and Sch 2 (see PARAS 595-597) and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 88 and Sch 2 apply are carried on so as to involve serious personal injury or serious pollution, see PARA 46 et seq.

2 As to the meaning of 'submersible apparatus' see PARA 595 note 3.

3 As to the meanings of 'apparatus' and 'supporting apparatus' see PARA 595 note 3.

4 As to the Secretary of State see PARA 38; and as to the Secretary of State's power to give directions see PARA 41.

5 Merchant Shipping Act 1995 Sch 2 para 4(1).

6 Ie under the Merchant Shipping Act 1995 Sch 2 para 4: see Sch 2 para 4(2).

7 As to the meaning of 'specified' under the Merchant Shipping Act 1995 s 88 see PARA 595 note 14.

8 Merchant Shipping Act 1995 Sch 2 para 4(2).

9 Ie in pursuance of the Merchant Shipping Act 1995 Sch 2 para 4: see Sch 2 para 4(3).

10 Merchant Shipping Act 1995 Sch 2 para 4(3).

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(iii) Construction and Survey

A. IN GENERAL

599. Provision regarding design, construction, etc of ships and their machinery and equipment.

Safety regulations¹ may make provision with respect to the design, construction, maintenance, repair, alteration, inspection, surveying and marking of ships and their machinery and equipment². Accordingly, regulations have been so made (or have effect as if so made³) with regard to the following:

- 483 (1) passenger ships⁴;
- 484 (2) cargo ships⁵;
- 485 (3) gas carriers⁶;
- 486 (4) ships carrying dangerous or noxious liquid substances in bulk⁷;
- 487 (5) other ships⁸;
- 488 (6) small workboats and pilot boats⁹;
- 489 (7) ro-ro passenger ships¹⁰;
- 490 (8) fishing vessels¹¹;
- 491 (9) pleasure vessels¹²; and
- 492 (10) high speed craft¹³.

1 As to the meaning of 'safety regulations' see PARA 591.

2 See the Merchant Shipping Act 1995 s 85(3)(a); and PARA 591.

3 Ie by virtue of the Interpretation Act 1978 s 17(2)(b), the regulations mentioned in heads (1) to (10) in the text have effect as if made under the Merchant Shipping Act 1995 s 85 (see PARA 591).

4 See the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514, Pt II (regs 6-19) (Strength, Construction and Watertight Subdivision) (amended by SI 2000/2687; SI 2001/1638); the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514, Pt V (regs 37-47) (Stability and Shipside Markings) (amended by SI 2000/2687; SI 2004/2884); the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514, Pt VI (regs 48-51) (Bilge Pumping Arrangements) (amended by SI 2000/2687); the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514, Pt VII (regs 52-61) (Electrical Equipment and Installations) (amended by SI 2000/2687); the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514, Pt VIII (regs 62-78) (Boilers and Machinery) (amended by SI 2000/2687; SI 2001/1638); the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514, Pt IX (regs 79-84) (Miscellaneous Requirements) (amended by SI 2000/2687); and the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514, Pt X (regs 85-89) (Miscellaneous Requirements for Ships with Special Category or Ro-Ro Cargo Spaces) (amended by SI 2000/2687). For the purposes of the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514, passenger ships are arranged in Classes as follows:

865 (1) ships engaged on international voyages: Class I (Ships engaged on voyages any of which are long international voyages); Class II (Ships engaged on voyages any of which are short international voyages) (see reg 2(6)); and

- 866 (2) ships not engaged on international voyages: Class II(A) (Ships engaged on voyages of any kind other than international voyages, which are not ships of Classes III to VI(A) as defined in the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998, SI 1998/2515 (see heads (a) to (e) below); or ships of Classes A, B, C or D as defined in the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687 (see PARA 602 note 4) which are new ships, engaged on domestic voyages, for the purposes of those Regulations (see the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514, reg 2(6)).

See also the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998, SI 1998/2515, Pt II (regs 6-14) (Strength, Construction and Watertight Subdivision) (amended by SI 2000/2687); the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998, SI 1998/2515, Pt V (regs 30-39) (Stability, Survivability and Shipside Markings) (amended by SI 2000/2687; SI 2001/1638); the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998, SI 1998/2515, Pt VI (regs 40-42) (Bilge Pumping Arrangements) (amended by SI 2000/2687); the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998, SI 1998/2515, Pt VII (regs 43-48) (Electrical Equipment and Installations) (amended by SI 2000/2687); the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998, SI 1998/2515, Pt VIII (regs 49-62) (Boilers and Machinery) (amended by SI 2000/2687; SI 2002/1650); the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998, SI 1998/2515, Pt IX (regs 63-67) (Miscellaneous Requirements) (amended by SI 2000/2687); the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998, SI 1998/2515, Pt X (regs 68-71) (Miscellaneous Requirements for Ships with Special Category or Ro-Ro Cargo Spaces) (amended by SI 2000/2687). For the purposes of the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998, SI 1998/2515, passenger ships are arranged in Classes as follows (see reg 2(6)(a)(i)):

- 867 (a) Class III (Ships engaged only on voyages in the course of which they are at no time more than 70 miles by sea from their point of departure and not more than 18 miles from the coast of the United Kingdom, and which are at sea only in favourable weather and during restricted periods);
- 868 (b) Class IV (Ships engaged only on voyages in Category A, B, C or D waters);
- 869 (c) Class V (Ships engaged only on voyages in Category A, B, or C waters);
- 870 (d) Class VI (Ships engaged only on voyages with not more than 250 passengers on board, to sea, or in Category A, B, C or D waters, in all cases in favourable weather and during restricted periods, in the course of which the ships are at no time more than 15 miles, exclusive of any Category A, B, C, or D waters, from their point of departure nor more than 3 miles from land);
- 871 (e) Class VI(A) (Ships carrying not more than 50 passengers for a distance of not more than 6 miles on voyages to or from isolated communities on the islands or coast of the United Kingdom and which do not proceed for a distance of more than 3 miles from land; subject to any conditions which the Secretary of State may impose).

Classes of ships under heads (a) to (e) do not include ships engaged on international voyages (see reg 2(6)(a)(ii)). For these purposes, 'Category A, B, C or D waters' means the waters specified as Category A, B, C or D waters in Merchant Shipping Notice 1776(M); and cognate expressions are to be construed accordingly; 'restricted period' means a period falling wholly within the following limits: (i) from 1 April to 31 October (both dates inclusive); and (ii) between one hour before sunrise and one hour after sunset in the case of ships fitted with navigation lights conforming to the collision regulations and between sunrise and sunset in the case of any other ships; and 'sea' does not include any waters of Category A, B, C or D: see reg 2(6)(b). Merchant Shipping Notice 1776(M) (Categorisation of Waters: Notice to Owners, Operators and Masters) (March 2003) is published by the Maritime and Coastguard Agency and it categorises United Kingdom waters which are not regarded as 'sea' for the purposes of Merchant Shipping legislation (excepting marine pollution). As to the Maritime and Coastguard Agency see PARA 56. As to the Secretary of State see PARA 38

See also the Merchant Shipping (Bridge Visibility) (Small Passenger Ships) Regulations 2005, SI 2005/2286. As to safety rules and standards in relation to passenger ships on domestic voyages see the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687; and PARA 602; and as to mandatory surveys for high speed passenger craft see the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152; and PARA 603.

5 See the Merchant Shipping (Cargo Ship Construction) Regulations 1997, SI 1997/1509 (amended by SI 1999/643; SI 2004/302; SI 2004/2151; SI 2005/2114). The Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, disapply the Merchant Shipping (Cargo Ship Construction) Regulations 1997, SI 1997/1509, to any vessel which has been examined, and in respect of which appropriate certificates have been issued, in accordance with the Code of Practice for the Safety of Large Commercial Sailing and Motor Vessels: see PARA

610. See also the Merchant Shipping (Additional Safety Measures for Bulk Carriers) Regulations 1999, SI 1999/1644 (amended by SI 2004/2151).

6 See the Merchant Shipping (Gas Carriers) Regulations 1994, SI 1994/2464 (amended by SI 2004/929).

7 See the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010 (amended by SI 1998/1153; SI 2004/930); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 404 et seq.

8 See the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514 (see note 4).

9 See the Merchant Shipping (Small Workboats and Pilot Boats) Regulations 1998, SI 1998/1609 (amended by SI 2006/2055).

10 See the Merchant Shipping (Emergency Equipment Lockers for Ro/Ro Passenger Ships) Regulations 1988, SI 1988/2272; the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514 (see note 4); and the Merchant Shipping (Ro-Ro Passenger Ships) (Stability) Regulations 2004, SI 2004/2884. See also the Code of Practice for Roll-on/Roll-off Ships - Stowage and Securing of Vehicles; and as to mandatory surveys for ro-ro ferries see the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152; and PARA 603.

11 See PARA 604 et seq.

12 See the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771; and PARA 609 et seq.

13 See the Merchant Shipping (High-Speed Craft) Regulations 2004, SI 2004/302; and PARA 614 et seq.

UPDATE

599 Provision regarding design, construction, etc of ships and their machinery and equipment

NOTE 7--SI 1996/3010 further amended: SI 2009/1210.

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B. MERCHANT SHIPPING

600. Survey and certification.

Safety regulations¹ may make provision with respect to the design, construction, maintenance, repair, alteration, inspection, surveying and marking of ships and their machinery and equipment². Accordingly, regulations have effect as if so made³ with regard to the following:

- 493 (1) the responsibility for carrying out surveys⁴;
- 494 (2) surveys of passenger ships⁵;
- 495 (3) survey requirements for the safety equipment of cargo ships⁶;
- 496 (4) survey requirements for the radio installations of cargo ships⁷;
- 497 (5) survey requirements for the structure, machinery and equipment of cargo ships⁸;
- 498 (6) the responsibilities of the owner and master⁹;
- 499 (7) the procedure to be adopted when the ship, including its structure, machinery and equipment, is deficient¹⁰;
- 500 (8) the issue, cancellation and posting-up of certificates to United Kingdom ships¹¹;
- 501 (9) the prohibition on proceeding to sea without the appropriate documentation¹² or on proceeding on a voyage or excursion without the appropriate certificate¹³;
- 502 (10) the limit on the number of passengers on passenger ships¹⁴;
- 503 (11) penalties¹⁵;
- 504 (12) power of detention¹⁶; and
- 505 (13) arbitration¹⁷.

1 As to the meaning of 'safety regulations' see PARA 591.

2 See the Merchant Shipping Act 1995 s 85(3)(a); and PARA 591. As to safety rules and standards in relation to passenger ships on domestic voyages see the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687; and PARA 602. As to mandatory surveys for ro-ro ferry and high speed passenger craft see the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152; and PARA 603.

3 Ie by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, have effect as if made under the Merchant Shipping Act 1995 ss 85, 86 (see PARAS 591, 592). The Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, apply to United Kingdom ships wherever they may be and to other ships whilst they are in United Kingdom waters, but not to fishing vessels, high speed craft to which the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARA 614 et seq) apply or pleasure vessels: Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 2(1) (amended by SI 1996/3188); Interpretation Act 1978 s 17(2)(b). The Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, disapply the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, to any vessel which has been examined, and in respect of which appropriate certificates have been issued, in accordance with the Code of Practice for the Safety of Large Commercial Sailing and Motor Vessels: see PARA 610. Accordingly, the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, do not apply to a United Kingdom ship which is a craft capable of a maximum speed in metres per second (m/s) equal to or exceeding $3.7\sqrt{0.1667}$, where ∇ equals the volume of displacement corresponding to the design waterline (m^3), and which has been surveyed, certified and maintained in accordance with and complies with the requirements of the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302: Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 2(3) (added by SI 2004/302). The Secretary of State may grant exemptions from all or any of the provisions

of the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210 (as may be specified in the exemption) on such terms (if any) as he may so specify and may, subject to giving reasonable notice, alter or cancel any such exemption: reg 2(2). As to the Secretary of State see PARA 38. For these purposes, 'pleasure vessel' means:

872 (1) any vessel which at the time it is being used is, in the case of a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner or, in the case of a vessel owned by a body corporate, one on which the persons are employees or officers of the body corporate, or their immediate family or friends; and is on a voyage or excursion which is one for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion; or

873 (2) any vessel wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of the club or their immediate family; and for the use of which any charges levied are paid into club funds and applied for the general use of the club; and

874 (3) in the case of any vessel referred to in head (1) or head (2) no other payments are made by or on behalf of the users of the vessel, other than by the owner;

and, for these purposes, 'immediate family' means, in relation to an individual, the spouse or civil partner of the individual, and a relative of the individual or the relative's spouse or civil partner; and 'relative' means brother, sister, ancestor or lineal descendant: reg 1(2) (definition amended by SI 2005/2114).

4 See the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 3 (amended by SI 1996/2418; SI 2000/1334).

5 See the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 4 (substituted by SI 2000/1334; amended by SI 2000/2687). As to survey requirements for United Kingdom passenger ships to which EC Council Directive 98/18 (OJ L144, 15.05.1998, p 1) of 17 March 1998 on safety rules and standards for passenger ships applies (as to which see PARA 602) see the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 4A (added by SI 2000/2687). As to safety rules and standards in relation to passenger ships on domestic voyages see the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687; and PARA 602; and as to mandatory surveys for high speed passenger craft see the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152; and PARA 603.

6 See the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 5 (substituted by SI 2000/1334).

7 See the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 6 (substituted by SI 2000/1334).

8 See the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 7 (substituted by SI 2000/1334).

9 See the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 8 (substituted by SI 2000/1334).

10 See the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 9 (amended by SI 2000/1334).

11 See the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, regs 10-20 (amended by SI 1996/2418; SI 2000/1334; SI 2000/2687). Special provision was made as to the continuing validity of certain certificates issued before 8 June 2000: see the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 2A (added by SI 2000/1334).

12 See the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 21 (amended by SI 1996/2418; SI 2000/1334; SI 2000/2687).

13 See the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 22 (amended by SI 2000/2687).

14 See the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 23.

15 See the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 24.

- 16 See the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 25.
- 17 See the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 26.

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601. Ship inspection and survey organisations.

Safety regulations¹ may make provision with respect to the design, construction, maintenance, repair, alteration, inspection, surveying and marking of ships and their machinery and equipment². Accordingly, provision has been made relating to common rules and standards for ship inspection and survey organisations³ in respect of:

- 506 (1) local representation of organisations authorised by the Maritime and Coastguard Agency⁴;
- 507 (2) reciprocity of authorisation of recognised organisations⁵;
- 508 (3) the duties of authorised organisations⁶ and of recognised organisations⁷;
- 509 (4) the withdrawal of recognition from organisations where the United Kingdom is satisfied that the organisation no longer fulfils the relevant criteria for recognition⁸.

1 As to the meaning of 'safety regulations' see PARA 591.

2 See the Merchant Shipping Act 1995 s 85(3)(a); and PARA 591.

3 See the Merchant Shipping (Ship Inspection and Survey Organisations) Regulations 1996, SI 1996/2908, made in the exercise of powers conferred by the Merchant Shipping Act 1995 ss 85, 86 (see PARAS 591, 592). The regulations implement, in part, EC Council Directive 94/57 of 22 November 1994 (OJ L319, 12.12.1994, p 20) on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations (amended by EC Commission Directive 97/58 of 26 September 1997 (OJ L274, 07.10.1997, p 8)). As to safety rules and standards in relation to passenger ships on domestic voyages see the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687; and PARA 602. As to mandatory surveys for ro-ro ferry and high speed passenger craft see the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152; and PARA 603.

4 See the Merchant Shipping (Ship Inspection and Survey Organisations) Regulations 1996, SI 1996/2908, reg 3, which, by virtue of the Interpretation Act 1978 s 17(2)(b), provides that the agreement in which the Maritime and Coastguard Agency and an organisation it authorises pursuant to EC Council Directive 94/57 (OJ L319, 12.12.1994, p 20) art 3 (see note 3) setting out their working relationship must contain a requirement that the organisation has local representation in the United Kingdom. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the Maritime and Coastguard Agency see PARA 56.

5 See the Merchant Shipping (Ship Inspection and Survey Organisations) Regulations 1996, SI 1996/2908, reg 4.

6 See the Merchant Shipping (Ship Inspection and Survey Organisations) Regulations 1996, SI 1996/2908, reg 5. It is a defence for an organisation charged with an offence under reg 5 to prove that all reasonable steps were taken to ensure that the regulation in question was complied with: see reg 8.

7 See the Merchant Shipping (Ship Inspection and Survey Organisations) Regulations 1996, SI 1996/2908, reg 6. It is a defence for an organisation charged with an offence under reg 6 to prove that all reasonable steps were taken to ensure that the regulation in question was complied with: see reg 8.

8 See the Merchant Shipping (Ship Inspection and Survey Organisations) Regulations 1996, SI 1996/2908, reg 7.

UPDATE

601 Ship inspection and survey organisations

NOTES 3, 4--Directive 94/57 replaced: European Parliament and EC Council Directive 2009/15 (OJ L131, 28.5.2009, p 47) and European Parliament and EC Council Regulation 391/2009 (OJ L131, 28.5.2009, p 11).

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602. Provision made in relation to passenger ships on domestic voyages.

Safety regulations¹ may make provision with respect to the design, construction, maintenance, repair, alteration, inspection, surveying and marking of ships and their machinery and equipment². Accordingly, provision has been made³ in relation to passenger ships engaged on domestic voyages⁴ in respect of:

- 510 (1) safety requirements⁵;
- 511 (2) the use of alternative construction processes, equipment and machinery⁶;
- 512 (3) stability requirements for ro-ro passenger ships⁷;
- 513 (4) safety requirements for persons with reduced mobility⁸;
- 514 (5) the Secretary of State's power to exempt classes of ships or individual ships from specified provisions of the regulations⁹;
- 515 (6) penalties for any contravention of the regulations¹⁰, and the power to detain a ship that does not comply with the requirements of the regulations¹¹.

1 As to the meaning of 'safety regulations' see PARA 591.

2 See the Merchant Shipping Act 1995 s 85(3)(a); and PARA 591.

3 See the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, made in the exercise of powers conferred by the Merchant Shipping Act 1995 ss 85, 86 (see PARAS 591, 592). As to the application of the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, see reg 4 (amended by SI 2004/302).

The Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, implement EC Council Directive 98/18 of 17 March 1998 (OJ L144, 15.05.1998, p 1) on Safety Rules and Standards for Passenger Ships (amended by EC Commission Directive 2002/25 of 5 March 2002 (OJ L98, 15.04.2002, p 1); EC Directive 2002/84 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 53); EC Directive 2003/24 of the European Parliament and of the Council of 14 April 2003 (OJ L123, 17.05.2003, p 18); and EC Commission Directive 2003/75 of 29 July 2003 (OJ L190, 30.07.2003, p 6)). As to mandatory surveys for ro-ro ferry and high speed passenger craft see the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152; and PARA 603.

4 For the purposes of the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, passenger ships engaged on domestic voyages are arranged in Classes as follows (see reg 3(1)):

- 875 (1) Class A (ships engaged solely on domestic voyages other than ships of Class B, Class C and Class D);
- 876 (2) Class B (ships engaged solely on domestic voyages in the course of which they are at no time more than 20 miles from the line of the coast where shipwrecked persons can land, corresponding to the medium tide height);
- 877 (3) Class C (ships engaged solely on domestic voyages in sea areas where the probability of significant wave heights exceeding 2.5 metres is less than 10% over a one year period for all year round operation, or over a specific restricted period of the year for operation exclusively in such period, in the course of which they are at no time more than 15 miles from a place of refuge, nor more than 5 miles from the line of the coast where shipwrecked persons can land, corresponding to the medium tide height);
- 878 (4) Class D (ships engaged solely on domestic voyages in sea areas where the probability of significant wave heights exceeding 1.5 metres is less than 10% over a one year period for all

year round operation, or over a specific restricted period of the year for operation exclusively in such period, in the course of which they are at no time more than 6 miles from a place of refuge, nor more than 3 miles from the line of the coast, where shipwrecked persons can land, corresponding to the medium tide height).

For the purposes of this classification of vessels, the Secretary of State must establish, and update when necessary, a list of sea areas under United Kingdom jurisdiction which includes the limits of zones for all year round operation and, where appropriate, for restricted periodical operation, and publish that list in its updated version in a Merchant Shipping Notice and in a public database available on the Internet site of the Maritime and Coastguard Agency: reg 3(2) (substituted by SI 2004/2883). Accordingly, for the purposes of rules or regulations made under the Merchant Shipping Act 1995, 'category A, B, C or D waters' respectively means the waters specified as Category A, B, C or D waters in Merchant Shipping Notice 1776(M): see the Merchant Shipping (Categorisation of Waters) Regulations 1992, SI 1992/2356, reg 3; Interpretation Act 1978 s 17(2)(b). Merchant Shipping Notice 1776(M) (Categorisation of Waters: Notice to Owners, Operators and Masters) (March 2003) is published by the Maritime and Coastguard Agency and it categorises United Kingdom waters which are not regarded as 'sea' for the purposes of Merchant Shipping legislation (excepting marine pollution). As to the Maritime and Coastguard Agency see PARA 56.

In relation to passenger ships of Class A, B, C or D of 24 metres or over in length engaged on domestic voyages, the following Regulations cease to apply (see the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 5 (amended by SI 2002/1473)):

- 879 (a) the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514 (see PARAS 599, 645);
- 880 (b) the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998, SI 1998/2515 (see PARAS 599, 645);
- 881 (c) the Merchant Shipping (Life-Saving Appliances For Ships Other Than Ships Of Classes III To VI(A)) Regulations 1999, SI 1999/2721 (see PARA 647);
- 882 (d) the Merchant Shipping (Life-Saving Appliances For Passenger Ships Of Classes III To VI(A)) Regulations 1999, SI 1999/2723 (see PARA 647);
- 883 (e) the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998, SI 1998/1011 (see PARA 640);
- 884 (f) the Merchant Shipping (Fire Protection: Large Ships) Regulations 1998, SI 1998/1012 (see PARA 640);
- 885 (g) the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070 (see PARA 643);
- 886 (h) the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473 (see PARA 641).

5 See the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 6 (amended by SI 2003/771, SI 2004/2883).

6 See the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, SI 2000/2687, reg 7.

7 See the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 7A (added by SI 2004/2883). See also note 3. As to where the operator of a regular service which operates throughout the year wishes to introduce an additional ro-ro passenger ship to which the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 7A (as so added) applies onto that service for a period of less than one year, see reg 7B (added by SI 2004/2883).

8 See the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 7C (added by SI 2004/2883).

9 See the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 8.

10 See the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 9 (amended by SI 2004/2883).

11 See the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 10.

UPDATE

602 Provision made in relation to passenger ships on domestic voyages

NOTE 3--Directive 98/18 replaced: European Parliament and EC Council Directive 2009/45 (OJ L163, 25.6.2009, p 1).

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603. Mandatory surveys for ro-ro ferry and high speed passenger craft.

Safety regulations¹ may make provision with respect to the design, construction, maintenance, repair, alteration, inspection, surveying and marking of ships and their machinery and equipment². Accordingly, provision has been made³ in relation to ro-ro ferry and high speed passenger craft operating a regular service to or from a port in the United Kingdom requiring the Maritime and Coastguard Agency⁴ to:

- 516 (1) carry out verifications in relation to the vessel⁵;
- 517 (2) carry out verifications in relation to the company operating the vessel, and the flag state of the vessel⁶;
- 518 (3) carry out an initial specific survey before the vessel begins operating on a regular service to or from a United Kingdom port⁷;
- 519 (4) carry out further surveys every year, or where the circumstances of the vessel change⁸;
- 520 (5) issue prevention of operation notices⁹, or reports of inspection¹⁰ or improvement notices requiring defects to be remedied¹¹;
- 521 (6) comply with certain administrative requirements¹²; and
- 522 (7) operate a shore-based navigational guidance system¹³.

1 As to the meaning of 'safety regulations' see PARA 591.

2 See the Merchant Shipping Act 1995 s 85(3)(a); and PARA 591.

3 See the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, which implement, in part, EC Council Directive 1999/35 of 29 April 1999 (OJ L138, 01.06.1999, p 1) on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (amended by EC Directive 2002/84 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 53)).

The Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, apply to a ro-ro ferry or a high speed passenger craft which is operating a regular service to or from a port in the United Kingdom either on international voyages, or in sea areas covered by Class A as referred to in EC Council Directive 98/18 of 17 March 1998 (OJ L144, 15.05.1998, p 1) on Safety Rules and Standards for Passenger Ships art 4 (see PARA 602): see the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, reg 3. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the safety rules and standards in relation to passenger ships on domestic voyages that have been implemented in the United Kingdom see the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687; and PARA 602.

4 For these purposes, 'Maritime and Coastguard Agency' means the Maritime and Coastguard Agency, an executive agency of the Department of Transport: the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, reg 2(1); Interpretation Act 1978 s 17(2)(b). As to the Maritime and Coastguard Agency see PARA 56.

5 See the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, reg 4. As to exemptions from reg 4 see reg 7.

6 See the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, reg 5. As to exemptions from reg 5 see reg 7.

7 See the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, reg 6. As to exemptions from reg 6 see reg 7.

8 See the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, reg 8.

9 The notices preventing a vessel which does not meet the requirements of EC Council Directive 1999/35 of 29 April 1999 (OJ L138, 01.06.1999, p 1) (see note 3) from operating: see the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, reg 9. A prevention of operation notice served in accordance with reg 9 is treated as a prohibition notice for the purposes of the Merchant Shipping Act 1995 s 264 (see PARA 53), s 265 (see PARA 54) and s 266 (see PARA 1241): see the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, reg 9. As to the costs of issuing prevention of operation notices see reg 12.

10 The where the defects to which the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, reg 9 (see the text and note 9) might otherwise apply do not pose an immediate danger to the safety of the vessel, its crew and passengers: see the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, reg 10.

11 See the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, reg 11. A notice issued in accordance with reg 11 is treated for the purposes of the Merchant Shipping Act 1995 s 261 (see PARA 50), s 263 (see PARA 52), s 264 (see PARA 53) and s 266 (see PARA 1241) as an improvement notice served under s 261: see the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, reg 11.

12 See the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, reg 13.

13 See the Merchant Shipping (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001, SI 2001/152, reg 14.

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C. FISHING VESSELS

604. Fishing vessel construction rules.

The Secretary of State¹ may make rules ('fishing vessel construction rules') prescribing requirements for the hull, equipment and machinery of United Kingdom fishing vessels² of any description (including any description framed by reference to the areas in which the vessels operate or the dates on which they were first registered³ in the United Kingdom or on which their construction was begun)⁴.

The Secretary of State may exempt any fishing vessel or description of fishing vessel from any requirement of the fishing vessel construction rules⁵. He may do so generally or for a specified time or with respect to a specified voyage or to voyages in a specified area, and may do so subject to any specified conditions⁶.

A surveyor of ships⁷ may inspect any fishing vessel for the purpose of seeing that it complies with the fishing vessel construction rules⁸.

If the fishing vessel construction rules are contravened⁹ with respect to any vessel (or if a vessel is exempted¹⁰ from any requirement subject to a condition and the condition is not complied with) the owner or master¹¹ of the vessel commits an offence¹². However, a breach of the rules cannot, of itself, form the basis of a civil claim by a person who has suffered damage as a result of such a breach¹³.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'United Kingdom fishing vessel' see PARA 230. As to the meaning of 'fishing vessel' see PARA 230 note 9; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

3 As to the meaning of 'registered' for these purposes see PARA 254 note 2.

4 Merchant Shipping Act 1995 s 121(1). At the date at which this volume states the law, no such rules had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Fishing Vessels (Safety Provisions) Rules 1975, SI 1975/330 (amended by the Fisheries Act 1981 s 13(2), Sch 3 para 8; SI 1975/471; SI 1976/432; SI 1977/313; SI 1977/498; SI 1978/1598; SI 1978/1873; SI 1981/567; SI 1991/1342; SI 1996/2419; SI 1998/928; SI 1998/2647; SI 1999/2998; SI 1999/3210; SI 2001/9; SI 2002/2201) (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1022) have effect as if so made. As to the fishing vessel construction rules see especially the Fishing Vessels (Safety Provisions) Rules 1975, SI 1975/330, Pt II (rr 2-75); and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1022. Fishing vessels of less than 15 metres length are subject to the Fishing Vessels (Code of Practice for the Safety of Small Fishing Vessels) Regulations 2001, SI 2001/9 (amended by SI 2002/2201); and fishing vessels of between 15 metres and 24 metres length are subject to the Fishing Vessels (Safety of 15-24 Metre Vessels) Regulations 2002, SI 2002/2201. Both these regulations require vessels to comply with codes of practice: see further **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1022. Fishing vessels of more than 24 metres length built on or after 1 January 1999 are subject to the Fishing Vessels (EC Directive on Harmonised Safety Regime) Regulations 1999, SI 1999/2998 (amended by SI 1999/3210; SI 2003/1112); see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1022.

As to the Secretary of State's power to make rules under the Merchant Shipping Act 1995 generally see PARA 41. Before making rules under the Merchant Shipping Act 1995 Pt V Ch II (ss 121-127), the Secretary of State must consult with organisations in the United Kingdom appearing to him representative of persons who will be affected by the regulations or rules: see s 306(4); and PARA 41 note 1.

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 121 and the provisions of any instrument of a legislative character having effect

thereunder are being contravened, or where activities to which s 121 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 46 et seq.

5 Merchant Shipping Act 1995 s 121(2).

6 Merchant Shipping Act 1995 s 121(3).

7 As to the meaning of 'surveyor of ships' see PARA 46 note 13.

8 Merchant Shipping Act 1995 s 121(4).

9 As to the meaning of 'contravention' see PARA 50 note 3.

10 le under the Merchant Shipping Act 1995 s 121(2) (see the text and note 5): see s 121(5).

11 As to the meaning of 'master' see PARA 424.

12 See the Merchant Shipping Act 1995 s 121(5); and PARA 1168.

13 *Todd v Adam*[2002] EWCA Civ 509, [2002] 2 All ER (Comm) 97, [2002] 2 Lloyd's Rep 293 (a number of features of the Merchant Shipping Act 1995 s 121, when taken together, firmly indicated that a breach of rules issued pursuant to s 121 could not, of itself, form the basis of a civil claim: (1) the existence of criminal sanctions in s 121(5) (see the text and notes 9-12) indicated that the legislature had not intended a civil remedy to be available; (2) the statutory duty the claimants sought to enforce was not a duty which the legislature had imposed on any particular person; (3) the power to exempt certain vessels under s 121(2) (see the text and note 5) means that any liability would not fall evenly; (4) it was unlikely that the legislature had intended the master or owner of a vessel with a valid certificate (see PARA 605 et seq) to be open to civil liability; (5) it was not likely that the legislature had intended to impose on masters or owners an absolute obligation in all events, even in the absence of negligence).

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605. Fishing vessel survey rules.

The Secretary of State¹ may make rules ('fishing vessel survey rules') for the surveying and periodical inspection of United Kingdom fishing vessels² or any description of such fishing vessels, for the purpose of ensuring their compliance with the requirements of the fishing vessel construction and equipment provisions³.

¹ As to the Secretary of State see PARA 38.

² As to the meaning of 'United Kingdom fishing vessel' see PARA 230. As to the meaning of 'fishing vessel' see PARA 230 note 9; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

³ Merchant Shipping Act 1995 s 122(1). For the purposes of Pt V Ch II (ss 121-127), 'fishing vessel construction and equipment provisions' means fishing vessel construction rules and rules or safety regulations relating to life-saving, radio and navigational equipment for fishing vessels: s 122(2). As to the meaning of 'safety regulations' see PARA 591; and as to the meaning of 'fishing vessel construction rules' see PARA 604.

At the date at which this volume states the law, no such rules had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Fishing Vessels (Safety Provisions) Rules 1975, SI 1975/330 (amended by the Fisheries Act 1981 s 13(2), Sch 3 para 8; SI 1975/471; SI 1976/432; SI 1977/313; SI 1977/498; SI 1978/1598; SI 1978/1873; SI 1981/567; SI 1991/1342; SI 1996/2419; SI 1998/928; SI 1998/2647; SI 1999/2998; SI 1999/3210; SI 2001/9; SI 2002/2201) (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1022) have effect as if so made. As to the fishing vessel survey rules see especially the Fishing Vessels (Safety Provisions) Rules 1975, SI 1975/330, Pt V (rr 123-131); and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1022. Fishing vessels of less than 15 metres length are subject to the Fishing Vessels (Code of Practice for the Safety of Small Fishing Vessels) Regulations 2001, SI 2001/9 (amended by SI 2002/2201); and fishing vessels of between 15 metres and 24 metres length are subject to the Fishing Vessels (Safety of 15-24 Metre Vessels) Regulations 2002, SI 2002/2201. Both these regulations require vessels to comply with codes of practice: see further **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1022. Fishing vessels of more than 24 metres length built on or after 1 January 1999 are subject to the Fishing Vessels (EC Directive on Harmonised Safety Regime) Regulations 1999, SI 1999/2998 (amended by SI 1999/3210; SI 2003/1112): see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1022.

As to the Secretary of State's power to make rules under the Merchant Shipping Act 1995 generally see PARA 41. Before making rules under the Merchant Shipping Act 1995 Pt V Ch II (ss 121-127), the Secretary of State must consult with organisations in the United Kingdom appearing to him representative of persons who will be affected by the regulations or rules: see s 306(4); and PARA 41 note 1.

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 122 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 122 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 46 et seq.

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606. Fishing vessel certificates confirming compliance with rules.

If the Secretary of State¹ or any person authorised by him for the purpose is satisfied, on receipt of a declaration of survey in respect of a fishing vessel² surveyed under the fishing vessel survey rules³, that the vessel complies with such of the requirements of the fishing vessel construction and equipment provisions⁴ as are or will be applicable to the vessel, the Secretary of State or authorised person must, on the application of the owner, issue a certificate (a 'fishing vessel certificate') showing that the vessel complies with those requirements⁵.

Fishing vessel survey rules may require, in the case of such fishing vessel certificate as may be specified in the rules, that the Secretary of State or person authorised to issue it must not issue the certificate unless satisfied that the vessel in respect of which it is to be issued is provided with the lights, shapes and means of making fog signals required by safety regulations⁶ for the prevention of collisions⁷.

A fishing vessel certificate must be in such form as may be prescribed by the fishing vessel survey rules⁸; and those rules may make provision for the duration, extension or cancellation of any such certificate and for the endorsement on it of information relating to the inspection, in accordance with the rules, of the vessel to which it relates and of any extension of the period for which the certificate was issued⁹.

The Secretary of State may require a fishing vessel certificate which has expired or been cancelled, to be delivered up as he directs¹⁰; and, if the owner or skipper of the fishing vessel fails without reasonable excuse to comply with such a requirement, he commits an offence¹¹.

The owner or skipper of a fishing vessel to whom a fishing vessel certificate is issued must forthwith, on the receipt of the certificate by him (or his agent), cause a copy of it to be put up in some conspicuous place on board the vessel, so as to be legible to all persons on board, and to be kept so put up and legible while the certificate remains in force and the vessel is in use¹². If the owner or skipper of a fishing vessel fails without reasonable excuse to comply with that requirement, he commits an offence¹³.

If any person intentionally makes, or assists in making, or procures to be made, a false or fraudulent fishing vessel certificate, he commits an offence¹⁴.

A fishing vessel certificate is admissible in evidence¹⁵.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'fishing vessel' see PARA 230 note 9.

3 As to the meaning of 'fishing vessel survey rules' see PARA 605.

4 As to the meaning of 'fishing vessel construction and equipment provisions' see PARA 605 note 3.

5 Merchant Shipping Act 1995 s 123(1). For this purpose, any requirement from which the vessel has been exempted under s 121(2) (see PARA 604) or any other provision of the Merchant Shipping Act 1995 is deemed not to be applicable to it: see s 123(1). For the purposes of ss 123-126, 'fishing vessel certificate' includes a certificate issued under the Fishing Vessels (Safety Provisions) Rules 1975, SI 1975/330, r 126B(1) (as to which see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1022): r 126B(2) (added by SI 1999/2998).

As to the Secretary of State's power to make regulations prescribing fees to be charged in respect of the issue or recording of any certificate, licence or other document see PARA 62. As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 123 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 123 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 46 et seq.

6 As to the meaning of 'safety regulations' see PARA 591.

7 Merchant Shipping Act 1995 s 123(2). As to the safety regulations relating to the prevention of collisions see PARA 715 et seq.

8 Merchant Shipping Act 1995 s 123(3). As to the form of the fishing vessel certificate see the Fishing Vessels (Safety Provisions) Rules 1975, SI 1975/330, r 126, Sch 1; the Fishing Vessels (EC Directive on Harmonised Safety Regime) Regulations 1999, SI 1999/2998, Pt II, reg 10 (amended by SI 2003/1112); and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1022.

9 Merchant Shipping Act 1995 s 123(3).

10 Merchant Shipping Act 1995 s 124(1).

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 124 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 124 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 46 et seq.

11 See the Merchant Shipping Act 1995 s 124(2); and PARA 1169.

12 Merchant Shipping Act 1995 s 124(3).

13 See the Merchant Shipping Act 1995 s 124(4); and PARA 1169.

14 See the Merchant Shipping Act 1995 s 124(5); and PARA 1169.

15 See the Merchant Shipping Act 1995 s 124(7); and PARA 1169.

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607. Prohibition on going to sea without appropriate certificate.

No fishing vessel¹ required to be surveyed under the fishing vessel survey rules² is to go to sea unless there are in force fishing vessel certificates³ showing that the vessel complies with such of the requirements of the fishing vessel construction and equipment provisions⁴ as are applicable to the vessel⁵. If a fishing vessel goes to sea in contravention⁶ of this prohibition, the owner or skipper of the vessel commits an offence⁷.

The skipper of any United Kingdom fishing vessel⁸ must on demand produce to any officer of Revenue and Customs⁹ or of the Secretary of State¹⁰ any certificate required by the fishing vessels safety provisions¹¹; and the fishing vessel, if in United Kingdom waters¹², may be detained until the certificate is so produced¹³.

1 As to the meaning of 'fishing vessel' see PARA 230 note 9.

2 As to the meaning of 'fishing vessel survey rules' see PARA 605.

3 As to the meaning of 'fishing vessel certificate' see PARA 606.

4 As to the meaning of 'fishing vessel construction and equipment provisions' see PARA 605 note 3.

5 Merchant Shipping Act 1995 s 125(1).

6 As to the meaning of 'contravention' see PARA 50 note 3.

7 See the Merchant Shipping Act 1995 s 125(2); and PARA 1170. As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 125 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 125 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 46 et seq.

8 As to the meaning of 'United Kingdom fishing vessel' see PARA 230.

9 As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

10 As to the Secretary of State see PARA 38.

11 Ie any certificate required by the Merchant Shipping Act 1995 Pt V Ch II (ss 121-127) (see PARAS 594, 604 et seq, 608): see s 125(3) (amended by the Merchant Shipping and Maritime Security Act 1997 s 9, Sch 1 para 3; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)).

12 As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

13 Merchant Shipping Act 1995 s 125(3) (as amended: see note 11). As to the detention of ships under the Merchant Shipping Act 1995 see PARA 1253.

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608. Requirement to give notice of alterations when a fishing vessel certificate is in force.

Where a fishing vessel certificate¹ is in force in respect of a fishing vessel² and:

- 523 (1) the certificate shows compliance with requirements of the fishing vessel construction rules³ and an alteration⁴ is made in the vessel's hull, equipment or machinery which affects the efficiency thereof or the seaworthiness of the vessel⁵; or
- 524 (2) the certificate shows compliance with requirements of the fishing vessel equipment provisions⁶ and an alteration is made affecting the efficiency or completeness of the appliances or equipment which the vessel is required to carry by the fishing vessel equipment provisions⁷,

the owner or skipper must, as soon as possible after the alteration is made, give written notice containing full particulars of it to the Secretary of State⁸ or, if the certificate was issued by another person, to that person⁹.

If the notice so required is not given as so required, the owner or skipper commits an offence¹⁰.

1 As to the meaning of 'fishing vessel certificate' see PARA 606.

2 As to the meaning of 'fishing vessel' see PARA 230 note 9.

3 As to the meaning of 'fishing vessel construction rules' see PARA 604.

4 For these purposes, 'alteration' in relation to anything includes the renewal of any part of it: Merchant Shipping Act 1995 s 126(3).

5 Merchant Shipping Act 1995 s 126(1)(a).

6 For these purposes, 'fishing vessel equipment provisions' means the provisions of the fishing vessel construction and equipment provisions other than the fishing vessel construction rules: Merchant Shipping Act 1995 s 126(3). As to the meaning of 'fishing vessel construction and equipment provisions' see PARA 605 note 3.

7 Merchant Shipping Act 1995 s 126(1)(b).

8 As to the Secretary of State see PARA 38.

9 Merchant Shipping Act 1995 s 126(1). As to the service of documents under the Merchant Shipping Act 1995 generally see s 291.

10 See the Merchant Shipping Act 1995 s 126(2); and PARA 1171.

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 126 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 126 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 46 et seq.

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D. VESSELS IN COMMERCIAL USE FOR SPORT OR PLEASURE

609. Vessels to which the provisions regulating commercial use for sport or pleasure apply.

The Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998¹ apply to:

- 525 (1) any vessel used for sport or pleasure which is not a pleasure vessel²;
- 526 (2) United Kingdom vessels wherever they may be³; and
- 527 (3) other vessels operating from United Kingdom ports whilst in United Kingdom waters⁴.

The regulations do not apply to vessels carrying more than 12 passengers⁵.

For these purposes, 'pleasure vessel' means:

- 528 (a) any vessel which at the time it is being used is: (i) (in the case of a vessel wholly owned by an individual or individuals) used only for the sport or pleasure of the owner or the immediate family⁶ or friends of the owner, or (in the case of a vessel owned by a body corporate) used only for sport or pleasure and where the persons on board the vessel are employees or officers of the body corporate, or their immediate family or friends⁷; and (ii) on a voyage or excursion which is one for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion⁸; or
- 529 (b) any vessel wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club⁹; and
- 530 (c) in the case of any vessel referred to in head (a) or head (b) above, no other payments are made by or on behalf of users of the vessel, other than by the owner¹⁰.

¹ The Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771 (see PARA 609 et seq): see reg 3(1).

² Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 3(1).

³ Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 3(2)(a).

⁴ Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 3(2)(b).

5 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 3(3).

6 For the purposes of this definition, 'immediate family' means, in relation to an individual, the spouse or civil partner of the individual, and a relative of the individual or the individual's spouse or civil partner, where 'relative' means brother, sister, ancestor or lineal descendant: Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 2(1) (definition amended by SI 2005/2114).

7 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 2(1)(a)(i).

8 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 2(1)(a)(ii).

9 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 2(1)(b).

10 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 2(1)(c).

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610. Large commercial vessels to comply with the applicable safety code of practice.

Large commercial vessels¹ must comply with the provisions of the Code of Practice for the Safety of Large Commercial Sailing and Motor Vessels². Certain statutory instruments³ do not apply to a vessel which has been examined, and in respect of which appropriate certificates have been issued, in accordance with the Code of Practice⁴. Where a vessel has been so examined and appropriate certificates issued, the vessel must not proceed or attempt to proceed to sea⁵ unless: (1) the certificates are currently in force⁶; and (2) the vessel complies with the applicable requirements of the Code of Practice (including any requirements as to operation, manning and maintenance)⁷.

1 As to the vessels generally to which the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, apply see PARA 609. The Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 4 applies only to large vessels: reg 4(1)(a). For these purposes, 'large vessel' means a vessel which is not a small vessel, and 'small vessel' means a vessel of less than 24 metres in load line length or (in the case of a vessel the keel of which was laid or which was at a similar stage of construction before 21 July 1968) less than 150 tons: reg 2(1). For the purposes of this definition, 'load line length' means the greater of the following distances (measured at and along the waterline): (1) the distance between the foreside of the stem and the axis of the rudder stock; or (2) a distance measured from the foreside of the stem, being 96% of the distance between that point and the aft side of the stern: see reg 2(1). The waterline referred to in this definition must be at 85% of the least moulded depth of the vessel and, in the case of a vessel having a rake of keel, the waterline must be parallel to the designed waterline: see reg 2(1). For these purposes, 'similar stage of construction' means a stage at which: (a) construction identifiable with a specific vessel begins; and (b) assembly of that vessel, comprising at least 1% of the estimated mass of all structural material has commenced; and 'tons' means gross tons, measured in accordance with the regulations for measuring tonnage which were in force on 20 July 1968: see reg 2(1). As to the tonnage regulations in force currently see PARA 248 et seq.

2 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 4(1)(b), (2). Accordingly, any provision of the Code of Practice expressed in the conditional (ie 'should') is a requirement: reg 4(2). References to Codes of Practice in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, are references to the Codes of those names published (or treated as published) by the Maritime and Coastguard Agency, and include any document amending the same which the Secretary of State considers relevant from time to time: reg 2(2). 'Maritime and Coastguard Agency' means the Maritime and Coastguard Agency ('MCA'), an executive agency of the Department for Transport, which is responsible throughout the United Kingdom for implementing HM government's maritime safety policy: see reg 2(1). As to the Secretary of State see PARA 38; and as to the Maritime and Coastguard Agency generally see PARA 56. As to the penalties that apply to the contravention of any of the requirements set out in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, see PARA 1166.

3 The statutory instruments listed in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 4(3), Sch 1 (Sch 1 amended by SI 2002/1473), which are, by virtue of the Interpretation Act 1978 s 17(2)(b), namely:

887 (1) the Merchant Shipping (Means of Access) Regulations 1988, SI 1988/1637 (as to which see PARA 648);

888 (2) the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210 (as to which see PARA 600);

- 889 (3) the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348 (as to which see PARA 496);
- 890 (4) the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320 (as to which see PARA 497);
- 891 (5) the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508 (as to which see PARA 486);
- 892 (6) the Merchant Shipping (Cargo Ship Construction) Regulations 1997, SI 1997/1509 (as to which see PARA 599);
- 893 (7) the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998, SI 1998/1011 (as to which see PARA 640);
- 894 (8) the Merchant Shipping (Fire Protection: Large Ships) Regulations 1998, SI 1998/1012 (as to which see PARA 640);
- 895 (9) the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070 (as to which see PARA 643);
- 896 (10) the Merchant Shipping (Load Lines) Regulations 1998, SI 1998/2241 (as to which see PARA 671 et seq);
- 897 (11) the Merchant Shipping (Life-Saving Appliances For Ships Other Than Ships Of Classes III To VI(A)) Regulations 1999, SI 1999/2721 (as to which see PARA 647); and
- 898 (12) the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473 (as to which see PARA 641).

4 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 4(3).

5 Any reference in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, to 'proceeding to sea' includes a reference to proceeding on a voyage or excursion that does not involve going to sea: reg 2(3).

6 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 4(4)(a).

7 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 4(4)(b).

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611. Small commercial vessels to comply with the applicable safety codes of practice.

Certain statutory instruments¹ do not apply to a small commercial vessel² which has been examined, and in respect of which a certificate has been issued, in accordance with the applicable Code of Practice³, or to a vessel which is operating under the phase-in arrangements of the Code of Practice⁴.

Where a vessel has been so examined and a small commercial vessel certificate issued, the vessel must not proceed or attempt to proceed to sea⁵ unless:

- 531 (1) the certificate is currently in force⁶;
- 532 (2) the vessel complies with the requirements of the relevant Code of Practice (including any requirements as to operation, manning and maintenance)⁷; and
- 533 (3) the certificate is displayed in some conspicuous place on board or, if this is not reasonably practicable, is available for inspection on board⁸.

Where a vessel is operating under the phase-in arrangements of a Code of Practice, it must not proceed or attempt to proceed to sea unless it meets the requirements for phase-in which are specified in the Code of Practice⁹.

¹ ie the statutory instruments listed in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 5(3), Sch 2 (Sch 2 amended by SI 2000/482; SI 2002/1473), which are, by virtue of the Interpretation Act 1978 s 17(2)(b), namely:

899 (1) the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802 (as to which see PARA 630);

900 (2) the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348 (as to which see PARA 496);

901 (3) the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508 (as to which see PARA 486);

902 (4) the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998, SI 1998/1011 (as to which see PARA 640);

903 (5) the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070 (as to which see PARA 643);

904 (6) the Merchant Shipping (Load Lines) Regulations 1998, SI 1998/2241 (as to which see PARA 671 et seq);

905 (7) the Merchant Shipping (Life-Saving Appliances For Ships Other Than Ships Of Classes III To VI(A)) Regulations 1999, SI 1999/2721 (as to which see PARA 647);

906 (8) the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473 (as to which see PARA 641).

2 As to the vessels generally to which the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, apply see PARA 609. The Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 5 applies only to small vessels: reg 5(1). As to the meaning of 'small vessel' see PARA 610 note 1.

3 For these purposes, 'Code of Practice' means 'The Safety of Small Commercial Sailing Vessels--A Code of Practice', or 'The Safety of Small Commercial Motor Vessels--A Code of Practice' or 'The Safety of Small Vessels in Commercial Use for Sport or Pleasure Operating from a Nominated Departure Point--A Code of Practice': see the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 5(2)(a) (amended by SI 2000/482). As to references to Codes of Practice in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, see PARA 610 note 2.

4 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 5(3). For these purposes, 'phase-in arrangements of the Code of Practice' means such arrangements set out in the relevant paragraphs of a Code of Practice: see reg 5(2)(b). As to the penalties that apply to the contravention of any of the requirements set out in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, see PARA 1166.

5 As to references in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, to 'proceeding to sea' see PARA 610 note 5.

6 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 5(4)(a).

7 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 5(4)(b). For this purpose, any provision of the Code expressed in the conditional (ie 'should') is a requirement: see reg 5(4)(b).

8 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 5(4)(c).

9 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 5(5).

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612. Power to permit equivalent provision to be made outside the regulations and codes.

Where the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998¹ or a Code of Practice² requires that a particular piece of equipment or machinery must be provided or carried in a vessel³, or that any particular provision must be made, the Secretary of State⁴ must permit any other piece of equipment or machinery to be provided or carried or any other provision to be made in that vessel if he is satisfied by trial thereof or otherwise that such other fitting, material, appliance or apparatus (or type thereof) or provision is at least as effective as that required by the Regulations⁵ or the Code of Practice⁶.

For these purposes, the results of verifications and tests carried out by the bodies and laboratories of other EEA states⁷ offering suitable and satisfactory guarantees of technical and professional competence and independence are to be accepted⁸.

1 Ie the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771 (see PARA 609 et seq): see reg 6.

2 Ie the safety codes of practice that apply to large commercial vessels (see PARA 610) and to small commercial vessels (see PARA 611).

3 Ie a vessel to which the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771 apply (as to which see PARA 609): see reg 6.

4 As to the Secretary of State see PARA 38.

5 Ie by the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771 (see PARA 609 et seq): see reg 6.

6 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 6.

7 For these purposes, 'EEA state' means a state which is a contracting party to the EEA Agreement; and 'EEA Agreement' means the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183): see the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 2(1).

8 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 7.

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613. Offences and power to detain.

Contravention of any of the provisions governing the safety requirements that are applicable to commercially operated vessels¹ is an offence by the owner and master of the vessel². In any case where a vessel does not so comply³, the vessel is liable to be detained⁴.

1 Ie contravention of any of the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771 (see PARA 609 et seq): see reg 8(1); and PARA 1166.

2 See the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 8(1); and PARA 1166.

3 Ie with the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771 (see PARA 609 et seq): see reg 9.

4 Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 9. The Merchant Shipping Act 1995 s 284 (enforcing detention of ships) (see PARA 1253) has effect in relation to the vessel, subject to the modification that, for the words 'this Act' wherever they appear, there are to be substituted 'the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998': see reg 9.

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E. HIGH SPEED CRAFT

614. Application of provisions.

The Merchant Shipping (High Speed Craft) Regulations 2004¹ apply to every high speed craft² which meets all of the following criteria³:

- 534 (1) it is either a United Kingdom high speed craft⁴ or a non-United Kingdom high speed craft in United Kingdom waters⁵;
- 535 (2) it is constructed⁶ on or after 1 January 1996, or was constructed before 1 January 1996 and repairs, alterations or modifications, or outfitting relating to it, of a major character are made on or after 1 January 1996⁷;
- 536 (3) it is (wholly or partly) sea-going or operating in any Category A, B, C or D waters⁸; and
- 537 (4) it is:
- 37
- 85. (a) a passenger craft⁹ which does not proceed in the course of its voyage¹⁰ more than four hours at operational speed¹¹ from a place of refuge¹² when fully laden¹³;
- 86. (b) a craft which is carrying passengers for hire or reward which is not a passenger craft and which does not proceed in the course of its voyage more than four hours at operational speed from a place of refuge when fully laden¹⁴;
- 87. (c) a cargo craft¹⁵ of 500 gross tonnage¹⁶ or more which does not proceed in the course of its voyage more than eight hours at operational speed from a place of refuge when fully laden¹⁷; or
- 88. (d) a cargo craft of less than 500 gross tonnage which is carrying cargo for hire or reward and which does not proceed in the course of its voyage more than eight hours at operational speed from a place of refuge when fully laden¹⁸.
- 38

The Merchant Shipping (High Speed Craft) Regulations 2004¹⁹ do not apply to a high speed craft which is²⁰:

- 538 (i) a pleasure craft²¹;
- 539 (ii) a warship, naval auxiliary or other craft owned or operated by a state and used, for the time being, only on government non-commercial service²²;
- 540 (iii) a craft not propelled by mechanical means²³;
- 541 (iv) a wooden craft of primitive build²⁴;
- 542 (v) a fishing craft²⁵;
- 543 (vi) a craft which has been duly examined, and in respect of which appropriate certificates have been issued, in accordance with the safety codes of practice which are applicable to large and small commercial vessels²⁶;
- 544 (vii) a craft which has been duly surveyed, certified and maintained in accordance with, and which complies with, the provisions of the Merchant Shipping (Small Workboats and Pilot Boats) Regulations 1998²⁷.

1 le the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARA 615 et seq): see reg 3(1).

2 For these purposes, 'high speed craft' means a craft capable of a maximum speed in metres per second (m/s) equal to or exceeding $3.7\sqrt{0.1667V}$, where V equals the volume of displacement corresponding to the design waterline (m^3), excluding craft the hull of which is supported clear above the water surface in non displacement mode by aerodynamic forces generated by ground effect; and 'craft' means ships and hovercraft: Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 2(1). The Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, apply to a high speed craft which is within the description set out in the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 4(3) (as to which see PARA 602), subject to the provisions of those regulations: Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(3).

3 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(1).

4 For these purposes, 'United Kingdom high speed craft' means a high speed craft which is a United Kingdom ship or a hovercraft registered in the United Kingdom: Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 2(1). As to the meaning of 'United Kingdom' see PARA 17 note 3.

5 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(1)(a).

6 For these purposes, 'constructed' means a craft the keel of which is laid or which is at a similar stage of construction; and 'similar stage of construction' means a stage at which construction identifiable with a specific craft begins and assembly of that craft has commenced comprising at least 50 tonnes or 3% of the estimated mass of all structural material, whichever is the less: Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 2(1).

7 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(1)(b).

8 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(1)(c). For these purposes, 'Category A, B, C or D waters' means waters specified as such in Merchant Shipping Notice 1776(M): see the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 2(1). 'Merchant Shipping Notice' means a notice described as such and issued by the Maritime and Coastguard Agency (an executive agency of the Department for Transport), and any reference to a particular Merchant Shipping Notice includes reference to any such document amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time: see reg 2(1). Merchant Shipping Notice 1776(M) (Categorisation of Waters: Notice to Owners, Operators and Masters) (March 2003) is published by the Maritime and Coastguard Agency and it categorises United Kingdom waters which are not regarded as 'sea' for the purposes of Merchant Shipping legislation (excepting marine pollution). As to the Secretary of State see PARA 38; and as to the Maritime and Coastguard Agency see PARA 56.

9 For these purposes, 'passenger craft' means craft carrying more than 12 passengers: Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 2(1).

10 For these purposes, 'voyage' includes an excursion: Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 2(1). References to proceeding to sea or on a voyage over water include proceeding on or over land, so far as such proceeding is part of that voyage: reg 2(4).

11 For these purposes, 'operational speed' means 90% of the maximum speed of which the craft is capable: Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 2(1).

12 For these purposes, 'place of refuge' means any naturally or artificially sheltered area which may be used as a shelter by craft under conditions likely to endanger its safety: Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 2(1).

13 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(1)(d)(i).

14 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(1)(d)(ii).

15 For these purposes, 'cargo craft' means a high speed craft, other than a passenger craft, which is capable of maintaining the main functions and safety systems of unaffected spaces after damage in any one compartment on board: Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 2(1).

16 For these purposes, 'gross tonnage' means gross tonnage within the meaning of the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510, reg 6 (as to which see PARA 248 et seq): Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 2(1).

- 17 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(1)(d)(iii).
- 18 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(1)(d)(iv).
- 19 In the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARA 615 et seq): see reg 3(2).
- 20 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(2).
- 21 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(2)(a). For these purposes, 'pleasure craft' means:

907 (1) any craft which is wholly owned by an individual or individuals and used only for the sport or pleasure of the owner or the immediate family or friends of the owner (or is owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends) and is on a voyage which is one for which the owner does not receive money for or in connection with operating the craft or carrying any person, other than as a contribution to the direct expenses of the operation of the craft incurred during the voyage; or

908 (2) any craft which is wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family; and for the use of which any charges levied are paid into club funds and applied for the general use of the club,

and no payments other than those mentioned are made by or on behalf of users of the craft, other than by the owner: reg 2(1). For the purposes of this definition, 'immediate family' means in relation to an individual, the spouse or civil partner of the individual, and a brother, sister, ancestor or lineal descendant of that individual or that individual's spouse or civil partner: see reg 2(1) (amended by SI 2005/2114). Where a high speed craft is managed by a person other than its owner (whether on behalf of the owner or some other person, or on his own behalf), a reference in the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, to the owner must be construed as including a reference to that person: reg 2(1), (3).

- 22 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(2)(b).
- 23 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(2)(c).
- 24 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(2)(d).
- 25 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(2)(e).
- 26 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(2)(f). The text refers to examinations and certificates issued in accordance with one of the following documents referred to in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 4 (as to which see PARA 610) and reg 5 (as to which see PARA 611), or in accordance with any document amending one or more of those documents which is considered by the Secretary of State to be relevant from time to time (Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(2)(f)), namely:

909 (1) the Code of Practice for Safety of Large Commercial Sailing and Motor Vessels (Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(2)(f)(i));

910 (2) the Safety of Small Commercial Sailing Vessels - A Code of Practice (Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(2)(f)(ii));

911 (3) the Safety of Small Commercial Motor Vessels - A Code of Practice (Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(2)(f)(iii));

912 (4) the Safety of Small Vessels in Commercial Use for Sport or Pleasure Operating from a Nominated Departure Point - A Code of Practice (Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(2)(f)(iv)).

- 27 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(2)(g). The text refers to a craft which has been surveyed, certified and maintained in accordance with, and which complies with, the Merchant Shipping (Small Workboats and Pilot Boats) Regulations 1998, SI 1998/1609, reg 5 (as to which see PARA 599): see the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 3(2)(g).

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615. Power to permit equivalent provision to be made outside the high speed craft regulations.

The Secretary of State¹ may grant exemptions from all or any of the provisions of the Merchant Shipping (High Speed Craft) Regulations 2004² (as may be specified in the exemption) for individual cases or classes of cases on such terms (if any) as he may specify, if he is satisfied that³:

- 545 (1) compliance with such provision is either impracticable or unreasonable in that case or class of cases⁴; and
- 546 (2) the exemption is subject to such conditions and limitations as will provide a level of safety equivalent to that provided by the provision or provisions from which exemption is being granted⁵.

The Secretary of State may, on giving reasonable notice, alter or cancel any exemption so granted⁶.

Any exemption so granted⁷ and any such alteration or cancellation⁸ must be given in writing and must specify the date on which it takes effect and the conditions (if any) on which it is given⁹.

1 As to the Secretary of State see PARA 38.

2 Ie the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARAS 614, 616 et seq): see reg 4(1).

3 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 4(1).

4 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 4(1)(a).

5 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 4(1)(b).

6 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 4(2). The text refers to any exemption granted under reg 4(1) (see the text and notes 1-5): see reg 4(2).

7 Ie under the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 4(1) (see the text and notes 1-5): see reg 4(3).

8 Ie under the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 4(2) (see the text and note 6): see reg 4(3).

9 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 4(3).

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616. Secretary of State's power to grant approvals.

The Secretary of State¹ may as respects a United Kingdom high speed craft² grant an approval for any thing in either the High Speed Craft Code 1994³ or the High Speed Craft Code 2000⁴ which requires the approval of the Government of the State whose flag the craft is entitled to fly⁵. The Secretary of State may, on giving reasonable notice, alter or cancel any approval so given⁶.

Any approval so given⁷ and any such alteration or cancellation⁸ must be given in writing and must specify the date on which it takes effect and the conditions (if any) on which it is given⁹.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'United Kingdom high speed craft' see PARA 614 note 4. As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 For these purposes, 'High Speed Craft Code 1994' means the International Code of Safety for High Speed Craft adopted by the Maritime Safety Committee of the International Maritime Organisation by resolution MSC36(63) of 20 May 1994 and amended by resolution MSC119.(74) of 6 June 2001 and MSC Circular 1057 of 23 December 2002 and includes any document amending it which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice: Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 2(1). As to the meaning of 'Merchant Shipping Notice' see PARA 614 note 8.

4 For these purposes, 'High Speed Craft Code 2000' means the International Code of Safety for High Speed Craft 2000 adopted by the Maritime Safety Committee of the International Maritime Organisation by resolution MSC97(73) of 5 December 2000 and amended by resolution MSC119(74) of 6 June 2002 and includes any document amending it which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice: Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 2(1).

5 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 5(1).

6 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 5(2). The text refers to any approval given under reg 5(1) (see the text and notes 1-5): see reg 5(2).

7 Ie under the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 5(1) (see the text and notes 1-5): see reg 5(3).

8 Ie under the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 5(2) (see the text and note 6): see reg 5(3).

9 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 5(3).

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617. The high speed craft codes.

A relevant high speed craft¹ which was constructed² on or after 1 January 1996 but before 1 July 2002 (or which was constructed before 1 January 1996 and to which repairs, alterations or modifications, or outfitting relating to it, of a major character were made on or after 1 January 1996 but before 1 July 2002) must comply with the High Speed Craft Code 1994³, and the requirements specified in Merchant Shipping Notice 1672(M+F) (which relates to ship inspections and survey organisations) relevant to a high speed craft of its description⁴.

A relevant high speed craft⁵ which was constructed on or after 1 July 2002 (or which was constructed before 1 July 2002 and to which repairs, alterations or modifications, or outfitting relating to it, of a major character are made on or after 1 July 2002) must comply with the High Speed Craft Code 2000⁶, and the requirements specified in Merchant Shipping Notice 1672(M+F) relevant to a high speed craft of its description⁷.

United Kingdom high speed craft⁸ and other high speed craft operating on a scheduled service from any port in the United Kingdom to any port in another member state (or vice versa) or operating on a voyage which is not an international voyage must⁹ comply with the statutory requirements relating to marine equipment¹⁰.

A relevant high speed craft¹¹ must, alternatively or additionally (as the case may be) to these requirements¹², comply with such requirements as apply in relation to a craft of its description which: (1) relate to the High Speed Craft Code 1994 or the High Speed Craft Code 2000 or to amendments from time to time of one of those Codes¹³; (2) relate to all or any of the health and safety purposes in relation to which the Secretary of State may make regulations¹⁴, which is considered by the Secretary of State to be relevant from time to time¹⁵; and (3) are specified as alternative or additional requirements in a Merchant Shipping Notice and relate to all or any of the purposes mentioned in head (2) above¹⁶.

1 Ie a high speed craft to which the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, apply (see PARA 614): see reg 6(1). Regulation 6(1) is subject to reg 6(2) (as to which see the text and notes 5-7) and reg 6(4) (as to which see the text and notes 8-10): see reg 6(1). As to the meaning of 'high speed craft' see PARA 614 note 2. As to offences under the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, see PARA 1167.

2 As to the meaning of 'constructed' for these purposes see PARA 614 note 6.

3 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6(1)(a). Having been made mandatory under reg 6, the language of the High Speed Craft Code 1994 is to be construed accordingly, and in particular 'should' must be construed as 'shall': reg 2(2). As to the meaning of 'High Speed Craft Code 1994' see PARA 616 note 3.

4 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6(1)(b). The requirements specified in Merchant Shipping Notice 1672(M+F) are, in relation to craft to which reg 6(1) applies, approved standards relating to construction or maintenance relating to hull, machinery, electrical installations and control installations: reg 6(3)(a). As to the meaning of 'Merchant Shipping Notice' see PARA 614 note 8.

5 Ie a high speed craft to which the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, apply (see PARA 614): see reg 6(2). Regulation 6(2) is subject to reg 6(4) (as to which see the text and notes 8-10): see reg 6(2).

6 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6(2)(a). Having been made mandatory under reg 6, the language of the High Speed Craft Code 2000 is to be construed accordingly, and in particular 'should' must be construed as 'shall': reg 2(2). As to the meaning of 'High Speed Craft Code 2000' see PARA 616 note 4.

7 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6(2)(b). The requirements specified in Merchant Shipping Notice 1672(M+F) are, in relation to craft to which reg 6(2) applies, requirements relating to hull, machinery, electrical installations and control installations which correspond to the requirements of the High Speed Craft Code 2000: reg 6(3)(b).

8 As to the meaning of 'United Kingdom high speed craft' see PARA 614 note 4. As to the meaning of 'United Kingdom' see PARA 17 note 3.

9 In so far as it relates to equipment to which the Merchant Shipping (Marine Equipment) Regulations 1999, SI 1999/1957 (see PARA 646) apply: see the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6(4).

10 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6(4). The text refers to compliance with the requirements of the Merchant Shipping (Marine Equipment) Regulations 1999, SI 1999/1957 (see PARA 646): see the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6(4).

11 Is a high speed craft to which the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, apply (see PARA 614): see reg 6(5).

12 Are the requirements set out in the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6(1)-(4) (see the text and notes 1-10): see reg 6(5).

13 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6(5)(a).

14 Are all or any of the purposes set out in the Merchant Shipping Act 1995 s 85(1) (as to which see PARA 591): see the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6(5)(b). As to the Secretary of State see PARA 38.

15 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6(5)(b).

16 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6(5)(c). The text refers to all or any of the purposes set out in the Merchant Shipping Act 1995 s 85(1) (as to which see PARA 591): see the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6(5)(c).

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618. Safety requirements for persons with reduced mobility.

In complying with the High Speed Craft Codes¹:

- 547 (1) a high speed craft² used for public transport and engaged on a voyage³, in whole or in part in sea areas classified in accordance with Merchant Shipping Notice 1747(M)⁴, which begins and ends in a port in the United Kingdom⁵; and
- 548 (2) a United Kingdom high speed craft⁶ used for public transport and engaged on a voyage, in whole or in part in sea areas classified in accordance with the EC Council Directive of 17 March 1998 on safety rules and standards for passenger ships⁷, which begins and ends in ports within a member state other than the United Kingdom or begins and ends in ports within a state (other than the United Kingdom) which is an EEA state⁸,

the keel of which was laid or which was at a similar stage of construction on or after 1 October 2004, must, where practicable, be constructed⁹ and equipped, and display signs, based on the guidelines in Annex III to the EC Council Directive of 17 March 1998 on safety rules and standards for passenger ships¹⁰.

However, in complying with the High Speed Craft Codes, a craft which falls within head (1) or head (2) above, the keel of which was laid or which was at a similar stage of construction before 1 October 2004 must, if undergoing modification, be constructed and equipped as respects that modification, and display signs as respects that modification, based on the guidelines in Annex III to the EC Council Directive of 17 March 1998 on safety rules and standards for passenger ships, only so far as is reasonable and practicable in economic terms¹¹.

The Secretary of State¹² must draw up a national action plan on how the guidelines in Annex III to the EC Council Directive of 17 March 1998 on safety rules and standards for passenger ships are to be applied to a high speed craft, the keel of which was laid or which was at a similar stage of construction before 1 October 2004 and which is used for public transport, as respects any modification of that craft¹³.

1 In complying with the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6 (see PARA 617): see reg 7A(2) (reg 7A added by SI 2004/2883). As to offences under the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, see PARA 1167.

2 As to the meaning of 'high speed craft' see PARA 614 note 2.

3 As to the meaning of 'voyage' see PARA 614 note 10.

4 As to the meaning of 'Merchant Shipping Notice' see PARA 614 note 8. Merchant Shipping Notice 1747(M) ('The Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687') was issued by the Maritime and Coastguard Agency in October 2000.

5 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 7A(1)(a) (as added: see note 1). As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 As to the meaning of 'United Kingdom high speed craft' see PARA 614 note 4.

7 le EC Council Directive 98/18 of 17 March 1998 (OJ L144, 15.5.1998, p 1) on safety rules and standards for passenger ships (amended by EC Commission Directive 2002/25 of 5 March 2002 (OJ L98, 15.4.2002, p 1); EC Directive 2002/84 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 53); EC Directive 2003/24 of the European Parliament and of the Council of 14 April 2003 (OJ L123, 17.5.2003, p 18); and EC Commission Directive 2003/75 of 29 July 2003 (OJ L190, 30.7.2003, p 6)): see the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 7A(1)(b) (as added: see note 4).

8 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 7A(1)(b) (as added: see note 1). The text refers to a state which is a contracting party to the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183): see the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 7A(1)(b) (as so added).

9 As to the meaning of 'constructed' and 'similar stage of construction' for these purposes see PARA 614 note 6.

10 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 7A(2)(a) (as added: see note 1).

11 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 7A(2)(b) (as added: see note 1).

12 As to the Secretary of State see PARA 38.

13 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 7A(3) (as added: see note 1).

UPDATE

618 Safety requirements for persons with reduced mobility

NOTE 7--Directive 98/18 replaced: European Parliament and EC Council Directive 2009/45 (OJ L163, 25.6.2009, p 1).

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619. Risk assessment with reference to wash.

A passage plan prepared in accordance with the High Speed Craft Code 1994¹ or the High Speed Craft Code 2000² (as applicable) must include a full risk assessment of the passage plan with respect to wash³. The risk assessment so required must: (1) be carried out in accordance with generally recognised procedures for risk assessment⁴; (2) identify any likely areas of potentially hazardous wash, taking into account possible operating conditions and the classification of wash as sub-critical, critical or super-critical⁵, and identify the operating restrictions necessary to reduce that potentially hazardous wash⁶; and (3) be documented in the operating manual required by the High Speed Craft Code 1994 or the High Speed Craft Code 2000 (as applicable)⁷.

1 As to the meaning of 'High Speed Craft Code 1994' see PARA 616 note 3. Having been made mandatory under the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6 (see PARA 617), the language of the High Speed Craft Code 1994 is to be construed accordingly, and in particular 'should' must be construed as 'shall': see reg 2(2); and PARA 617 note 3.

2 As to the meaning of 'High Speed Craft Code 2000' see PARA 616 note 4. Having been made mandatory under the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 6 (see PARA 617), the language of the High Speed Craft Code 2000 is to be construed accordingly, and in particular 'should' must be construed as 'shall': see reg 2(2); and PARA 617 note 6.

3 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 7(1). For these purposes, 'wash' means the sweep of waves left behind by a moving craft, classified as sub-critical, critical or supercritical in terms of the depth Froude number:

$$F_{nh} = V_s / [\text{radic}](gh),$$

where F_{nh} describes the ratio of the vessel's speed to the wave propagation velocity in shallow water, V_s is the ship speed in metres per second, g is the acceleration due to gravity and h is the water depth in metres: see reg 2(1). For the purposes of classification, 'sub-critical' means an F_{nh} value of less than 0.85, 'critical' means an F_{nh} value between 0.85 and 1.15, and 'supercritical' means an F_{nh} value greater than 1.15: see reg 2(1). As to offences under the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, see PARA 1167.

4 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 7(2)(a).

5 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 7(2)(b)(i).

6 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 7(2)(b)(ii).

7 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 7(2)(c).

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620. Passenger craft to operate in accordance with permit.

A Permit to Operate which is issued as respects a passenger craft¹ by the Secretary of State² in accordance with the High Speed Craft Code 1994³ or the High Speed Craft Code 2000⁴ must state the maximum number of passengers which that craft is allowed to carry on board⁵. A Permit to Operate issued in this way⁶ must set out, and be subject to, the operating restrictions identified in accordance with the risk assessment with reference to wash⁷.

The owner⁸ and master of a passenger craft must ensure that the craft does not carry more than the maximum number of passengers as stated in the craft's Permit to Operate⁹.

1 As to the meaning of 'passenger craft' see PARA 614 note 9.

2 As to the Secretary of State see PARA 38.

3 As to the meaning of 'High Speed Craft Code 1994' see PARA 616 note 3; and see PARA 617 note 3.

4 As to the meaning of 'High Speed Craft Code 2000' see PARA 616 note 4; and see PARA 617 note 6.

5 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 8(1).

6 Ie in accordance with the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 8(1) (see the text and notes 1-5): see reg 8(2).

7 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 8(2). The text refers to the operating restrictions identified in accordance with reg 7 (as to which see PARA 619): see reg 8(2). As to the meaning of 'wash' see PARA 619 note 3.

8 As to references in the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, to the owner see PARA 614 note 21.

9 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 8(3). As to offences under the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, see PARA 1167.

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621. Behaviour of persons on passenger craft.

A person on board a high speed passenger craft¹ who is drunk and disorderly, and if he has paid a fare has had that fare returned or tendered to him, must, if so requested by the master or crew, leave the ship at any place in the United Kingdom² at which he can conveniently do so³.

A person who is on board a high speed passenger craft must not, after being warned by the master or crew, molest or continue to molest any passenger⁴.

A person who is on board a high speed passenger craft must not intentionally do or cause to be done anything in such a manner as to: (1) obstruct or damage any part of the machinery or equipment of that craft⁵; or (2) obstruct, impede or molest the master or crew, or any of them, in the navigation or management of the craft, or otherwise in the execution of their duty on or about the craft⁶.

Any contravention of these provisions is an offence⁷.

1 As to the meaning of 'passenger craft' see PARA 614 note 9.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 9(1).

4 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 9(2).

5 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 9(3)(a).

6 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 9(3)(b).

7 See the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 10; and PARA 1167.

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622. Offences and power to detain.

Any contravention of the Merchant Shipping (High Speed Craft) Regulations 2004¹ in respect of a high speed craft² is an offence by both the owner³ and the master of that craft⁴. In any case where a high speed craft does not so comply⁵, the craft is liable to be detained⁶.

1 In any contravention of the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARA 614 et seq), other than reg 9 (as to which see PARA 621): see reg 10(1); and PARA 1167.

2 As to the meaning of 'high speed craft' see PARA 614 note 2.

3 As to references in the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, to the owner see PARA 614 note 21.

4 See the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 10(1); and PARA 1167.

5 In with the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARA 614 et seq): see reg 11.

6 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 11. The Merchant Shipping Act 1995 s 284(1)-(6), (8) (enforcing detention of ships) (see PARA 1253) has effect in relation to the craft, subject to the modification that, for the words 'this Act' wherever they appear, there are to be substituted 'the Merchant Shipping (High Speed Craft) Regulations 2004', and for the word 'ship' there were substituted 'high speed craft': see reg 11.

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(iv) Health and Safety

A. IN GENERAL

623. Health and safety: general duties.

Regulations¹ have been made in order to give effect as respects shipping activities in the United Kingdom² to various EC Council Directives relating to the safety and health of workers at work³. Accordingly, it is the duty of the employer⁴ of workers aboard a United Kingdom ship⁵ to ensure the health and safety of workers and other persons so far as is reasonably practicable, having regard to the following principles⁶:

- 549 (1) the avoidance of risks, which among other things include the combating of risks at source and the replacement of dangerous practices, substances or equipment by non-dangerous or less dangerous practices, substances or equipment⁷;
- 550 (2) the evaluation of unavoidable risks and the taking of action to reduce them⁸;
- 551 (3) the adoption of work patterns and procedures which take account of the capacity of the individual, especially in respect of the design of the workplace and the choice of work equipment, with a view in particular to alleviating monotonous work and to reducing any consequent adverse effect on workers' health and safety⁹;
- 552 (4) the adaptation of procedures to take account of new technology and other changes in working practices, equipment, the working environment and any other factors which may affect health and safety¹⁰;
- 553 (5) the adoption of a coherent approach to management of the vessel or undertaking, taking account of health and safety at every level of the organisation¹¹;
- 554 (6) giving collective protective measures priority over individual protective measures¹²;
- 555 (7) the provision of appropriate and relevant information and instruction for workers¹³.

The matters to which the duty extends include in particular¹⁴:

- 556 (a) provision and maintenance of plant, machinery and equipment and systems of work that are, so far as is reasonably practicable, safe and without risk to health¹⁵;
- 557 (b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risk to health in connection with the risk to health in connection with the use, handling, storage and transport of articles and substances¹⁶;
- 558 (c) such arrangements as are appropriate, having regard to the nature of, and the substances used in, the activities and size of the operation, for the effective planning, organisation, control, monitoring and review of preventative and protective measures¹⁷;

- 559 (d) provision of such information, instruction, training and supervision as is necessary to ensure the health and safety of workers and of other persons aboard ship who may be affected by their acts or omissions¹⁸;
- 560 (e) maintenance of all places of work within the ship in a condition which is, so far as is reasonably practicable, safe and without risk to health¹⁹;
- 561 (f) arrangements to ensure, so far as is reasonably practicable, that no person has access to any area of the ship to which it is necessary to restrict access on grounds of health and safety unless the individual concerned has received adequate and appropriate health and safety instruction²⁰;
- 562 (g) provision and maintenance of an environment for persons aboard ship that is, so far as is reasonably practicable, safe and without risk to health²¹;
- 563 (h) collaboration with any other persons upon whom a duty is imposed²² or who have control of a matter to which a regulation relates to protect, so far as is reasonably practicable, the health and safety of all authorised persons aboard the ship or engaged in loading or unloading activities in relation to that ship²³.

A written statement must be prepared and, as often as may be appropriate, revised, of the employer's general policy with respect to health and safety and the organisation and arrangements for the time being in force for carrying out that policy, and this and any revisions must be brought to the notice of the workers²⁴.

A suitable and sufficient assessment must be made of the risks of the health and safety of workers arising in the course of their activities or duties, for the purpose of identifying groups of workers at particular risk in the performance of their duties and the measures to be taken to comply with the employer's duties²⁵; and any significant findings of the assessment and any revision of it must be brought to the notice of workers²⁶.

Further provision is made in relation to:

- 564 (i) workers who include women with potential for child-bearing where the work is of a kind which could involve risk²⁷, by reason of her condition, to the health and safety of a new or expectant mother²⁸, or to that of her baby, from any process or working conditions, or physical, biological or chemical agents²⁹;
- 565 (ii) the provision to workers of such health surveillance as is appropriate having regard to the risks to their health and safety which are identified by the risk assessment³⁰;
- 566 (iii) the need, in entrusting tasks to workers, to take account of their capabilities as regards health and safety and to provide adequate and appropriate health and safety training and instruction where required³¹;
- 567 (iv) special responsibilities for health and safety to be assigned (including the appointment of safety officers) and for consultation with workers to be effected on all matters relating to their health and safety³²; and
- 568 (v) the general duties of workers in relation to health and safety³³.

No charge in respect of anything done or provided in pursuance of any of the above requirements may be levied or permitted to be levied on any worker³⁴.

No person may intentionally or recklessly interfere with or misuse anything provided in the interests of health and safety aboard a United Kingdom ship³⁵.

Contravention of the above requirements is an offence³⁶; and the ship may be detained until the safety of all workers and other persons employed is secured if, after inspection, an inspector is satisfied that there has been a failure to comply, in relation to that ship, with the above requirements; but the inspector must not, in the exercise of such powers, detain or delay

the ship unreasonably³⁷. An inspector has similar powers in relation to a ship which is not a United Kingdom ship when it is in a United Kingdom port³⁸.

These general duties in relation to health and safety are supplemented by requirements which relate to the provision of safety and/or health signs at work³⁹.

It is the duty of the employer of workers aboard a United Kingdom ship, so far as is reasonably practicable, also to take appropriate measures or provide means (including mechanical equipment) to avoid the need for manual handling of loads which involve a risk of workers being injured⁴⁰.

1 As to safety regulations generally see PARA 591. See also note 3.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 The regulations so made are the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, and the EC Council Directives to which they give effect, as mentioned in the text, are: EC Council Directive 89/391 of 12 June 1989 (OJ L183, 29.06.1989, p 1) on the introduction of measures to encourage improvements in the safety and health of workers at work (amended by EC Regulation 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ L284, 31.10.2003, p 1); and EC Directive 2007/30 of the European Parliament and of the Council of 20 June 2007 (OJ L165, 27.06.2007, p 21)); EC Council Directive 91/383 of 25 June 1991 (OJ L206, 29.07.1991, p 19) supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (amended by EC Directive 2007/30 of the European Parliament and of the Council of 20 June 2007 (OJ L165, 27.06.2007, p 21)); and EC Council Directive 92/85 (OJ L348, 28.11.1992, p 1) on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, are made under the powers contained in the Merchant Shipping Act 1995 ss 85, 86 (see PARAS 591, 592) except in respect of their application to government ships (see the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 2(2); and note 5) and in respect of the provision of benefits to new or expectant mothers contained in reg 8 (see head (i) in the text) and reg 9 (see note 29), where the power is provided by the European Communities Act 1972 s 2(2).

4 It is the duty of every employer, and any other person upon whom a duty is imposed by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, to comply with the provisions of those regulations; and where such a person does not have control of the matter to which the regulation relates because he does not have responsibility for the operation of the ship, then any duty imposed by that regulation also extends to any person who has control of that matter: see reg 4 (amended by SI 1998/2411). As to workers on board a United Kingdom ship not employed by the owner of the ship (or any other organisation or person such as the manager, or bareboat charterer, who has assumed the responsibility for operation of the ship from the owner) see the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, regs 2(2), 13. A shipmaster is not excluded from the employer's general duty of care to his employee: *MacIver v J & A Gardner Ltd* 2001 SLT 585, OH.

5 For these purposes, 'United Kingdom ship' means a ship which is a United Kingdom ship within the meaning of the Merchant Shipping Act 1995 s 85(2) (see PARA 591 note 4), is a government ship within the meaning of s 308(4) (see PARA 20 note 3), or is a hovercraft registered under the Hovercraft Act 1968 (see PARA 390 et seq): Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 2(2). The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, apply to all activities of workers on United Kingdom ships except when the activity of a worker is on a public service vessel or a vessel engaged in search and rescue, and when characteristics of that activity inevitably conflict with a provision of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962; and in such a case there is a duty on the employer so far as is reasonably practicable to ensure the health and safety of the worker when performing that activity: see reg 3(1). However, reg 28 (see the text and note 38), reg 29 (see note 37) and reg 30 (see note 37) apply to ships other than United Kingdom ships which are in United Kingdom waters: see reg 3(2). For these purposes, 'health and safety' includes the occupational health and safety of persons while on board the ship and while boarding or leaving the ship: reg 2(2).

6 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(1) (amended by SI 2001/54).

7 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(1)(a).

- 8 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(1)(b).
- 9 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(1)(c).
- 10 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(1)(d).
- 11 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(1)(e).
- 12 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(1)(f).
- 13 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(1)(g).
- 14 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(2) (amended by SI 1998/2411). This provision is expressed to be without prejudice to the generality of the duty under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(1) (see the text and notes 4-13): see reg 5(2) (as so amended).
- 15 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(2)(a).
- 16 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(2)(b).
- 17 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(2)(c).
- 18 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(2)(d).
- 19 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(2)(e).
- 20 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(2)(f).
- 21 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(2)(g).
- 22 Ie any other persons covered by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 4 (see note 4): see reg 5(2)(h).
- 23 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 5(2)(h).
- 24 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 6(1). However, the written statement mentioned in reg 6(1) does not apply where five or fewer workers in aggregate are employed by the same employer, or associated employers, in a United Kingdom ship: see reg 6(2).
- 25 Ie under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962: see reg 7(1).
- 26 Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 7(1). As to the risk assessment see further reg 7(2)-(6). As to safety signs which must be provided where a risk assessment made under reg 7(1) indicates that risks cannot be avoided or adequately controlled in other ways see note 39.

Although working in a war zone involved risks which could not all be guarded against by the exercise of reasonable care and skill, the owners of vessels which are operating in a war zone owe a qualified duty of care to members of the crew with regard to their safety; whatever the type of vessel, that duty requires the owners to provide written instructions as to specific types of risk to which the vessel is likely to be exposed and to give appropriate instruction and information as to how such risk might be reduced or eliminated: *Tarrant v Ramage, The Salvia* [1998] 1 Lloyd's Rep 185, (1997) Times, 31 July.

27 For these purposes, references to 'risk' in relation to risk from any infectious or contagious disease are references to a level of risk at work which is in addition to the level to which a new or expectant mother may be expected to be exposed outside the workplace: Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 8(4).

28 For these purposes, 'new or expectant mother' means a worker who is either pregnant, or has given birth within the previous six months, or is breast-feeding: Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 2(2).

29 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 8. As to circumstances where a new or expectant mother works at night see reg 9; and as to the notification that must be given to the employer or to the company before such action is required see reg 10.

30 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 11. The text refers to the risk assessment made under reg 7(1) (see the text and notes 25-26): see reg 11.

31 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 12.

32 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, Pt IV (regs 14-20).

33 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, Pt V (reg 21).

34 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 22.

35 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 23.

36 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 24. Provision is made also for corporate offences (see reg 25 (amended by SI 1998/2411)); and for the burden of showing that compliance with a duty in the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, was not reasonably practicable to be on the defendant (see reg 26). See also PARA 1172.

37 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 27. Those provisions of the Merchant Shipping Act 1995 which deal with the enforcement of detention (ie s 284 (see PARA 1253)), with references of detention notices to arbitration (ie s 96 (see PARA 1205)) and with compensation in relation to an invalid detention (ie s 97 (see PARA 1206)), are applied with modifications for these purposes: see the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, regs 29, 30.

38 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 28. See note 37.

39 See the Merchant Shipping and Fishing Vessels (Safety Signs and Signals) Regulations 2001, SI 2001/3444, which give effect to EC Council Directive 92/58 of 24 June 1992 (OJ L245, 26.08.1992, p 23) on the minimum requirements for the provision of safety and/or health signs at work (amended by EC Directive 2007/30 of the European Parliament and of the Council of 20 June 2007 (OJ L165, 27.06.2007, p 21)). The Merchant Shipping and Fishing Vessels (Safety Signs and Signals) Regulations 2001, SI 2001/3444, are made under the powers contained in the Merchant Shipping Act 1995 ss 85, 86 (see PARAS 591, 592) except in respect of their application to government ships (see the Merchant Shipping and Fishing Vessels (Safety Signs and Signals) Regulations 2001, SI 2001/3444, reg 2(1)), where the power is provided by the European Communities Act 1972 s 2(2).

The circumstances in which the Merchant Shipping and Fishing Vessels (Safety Signs and Signals) Regulations 2001, SI 2001/3444, apply are set out in terms which are similar to those governing the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962 (see note 5): see the Merchant Shipping and Fishing Vessels (Safety Signs and Signals) Regulations 2001, SI 2001/3444, reg 3. However, exclusions apply to signs used in relation to the supply of dangerous substances or equipment, for the transport of dangerous goods and for the regulation of transport: see reg 3. The persons on whom duties are imposed are set out in reg 4 (again in terms similar to the persons on whom general duties relating to health are imposed: see note 4). Safety signs must be provided where a risk assessment made under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 7(1) (see the text and notes 25-26) indicates that risks cannot be avoided or adequately controlled in other ways: see the Merchant Shipping

and Fishing Vessels (Safety Signs and Signals) Regulations 2001, SI 2001/3444, reg 5, Schedule. The employer must ensure that comprehensible and relevant information on the measures to be taken in connection with safety signs is provided to each worker; and that each worker receives suitable and sufficient instruction and training in the meaning of safety signs and the measures to be taken in connection with safety signs: see reg 6. As to enforcement see regs 7-13; and PARA 1172.

40 See the Merchant Shipping and Fishing Vessels (Manual Handling Operations) Regulations 1998, SI 1998/2857, which give effect as regards shipping activities in the United Kingdom to EC Council Directive 90/269 of 29 May 1990 (OJ L156, 21.06.1990, p 9) on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (amended by EC Directive 2007/30 of the European Parliament and of the Council of 20 June 2007 (OJ L165, 27.06.2007, p 21)). The Merchant Shipping and Fishing Vessels (Manual Handling Operations) Regulations 1998, SI 1998/2857, are made under the powers contained in the Merchant Shipping Act 1995 ss 85, 86 (see PARAS 591, 592) except in respect of their application to government ships (see the Merchant Shipping and Fishing Vessels (Manual Handling Operations) Regulations 1998, SI 1998/2857, reg 2(2)), where the power is provided by the European Communities Act 1972 s 2(2).

The circumstances in which the Merchant Shipping and Fishing Vessels (Manual Handling Operations) Regulations 1998, SI 1998/2857, apply are set out in terms which are similar to those governing the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962 (see note 5): see the Merchant Shipping and Fishing Vessels (Manual Handling Operations) Regulations 1998, SI 1998/2857, reg 3. However, exclusions apply where the Manual Handling Operations Regulations 1992, SI 1992/2793 (see **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARA 583) apply instead: see the Merchant Shipping and Fishing Vessels (Manual Handling Operations) Regulations 1998, SI 1998/2857, reg 3. The persons on whom duties are imposed are set out in reg 4 (again in terms similar to the persons on whom general duties relating to health are imposed: see note 4). The duty on employers is set out in the text (see reg 5); and every worker while at work must make full and proper use of any system of work provided for his use by his employer in accordance with reg 5 (see reg 6). As to enforcement see regs 7-13 (reg 13 amended by SI 1999/2205); and PARA 1172.

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624. Requirements for certification, training or qualification.

The following regulations have been made in respect of certification, training or qualification, each of which has an implication (at least in part) for the maintenance of safety standards:

- 569 (1) the requirement for ships' cooks to be qualified and certificated¹;
- 570 (2) the certification and training etc of officers on sea-going ships²;
- 571 (3) the certification and training etc of hovercraft personnel³;
- 572 (4) duties imposed on the owner and master of United Kingdom ships in relation to certification, training etc⁴;
- 573 (5) the requirement for masters of certain classes of ship engaged on voyages in specified local waters, and members of the crew of specified classes of local passenger vessels, to be qualified appropriately⁵.

1 See the Merchant Shipping (Certification of Ships' Cooks) Regulations 1981, SI 1981/1076; and PARA 498.

2 See the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, Pt II (regs 3-21); and PARA 496.

3 See the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, Pt III (regs 22-24); and PARA 496.

4 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 4; and PARA 497.

5 See the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, Pt 2 (regs 5-26); the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224, regs 3-5; and PARA 499.

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B. HEALTH

625. Hours of work and working time for seafarers and workers on the inland waterways.

The general provisions which govern the organisation of working time for employees¹ do not apply to the organisation of working time for seafarers², for sea-fishermen³, or for workers on the inland waterways⁴.

Accordingly, in relation to any sea-going ship⁵, it is the duty of the company, the employer of a seafarer and the master of the ship to ensure that a seafarer is provided with at least the minimum hours of rest⁶; and further provision is made in relation to:

- 574 (1) duties imposed on the master of a ship (or a person authorised by the master) to ensure that a table of scheduled hours of rest is posted-up in a prominent and easily accessible place in the ship⁷;
- 575 (2) the requirement imposed on the master of a ship (or a person authorised by the master) to maintain a record of a seafarer's daily hours of rest⁸;
- 576 (3) a prohibition on seafarers under the age of 18 from working at night⁹;
- 577 (4) the requirement for a company to provide the Maritime and Coastguard Agency with such information as the Agency may specify on watchkeepers and other seafarers working at night¹⁰;
- 578 (5) a seafarer's entitlement to be paid annual leave¹¹;
- 579 (6) a seafarer's entitlement to hours of rest or annual leave under separate provision (including a provision of his contract)¹²;
- 580 (7) enforcement¹³.

In relation to any United Kingdom ship, wherever it may be, which operates (or ordinarily operates) under a certificate which does not allow the ship to go beyond the limits of certain categories of United Kingdom waters which are not regarded as 'sea' for most purposes of the merchant shipping legislation¹⁴ (or which is not required to be certified)¹⁵, and in relation to any ship other than a United Kingdom ship, which operates in the United Kingdom and does not go beyond the limits of those same categories of waters¹⁶, provision is made¹⁷ in relation to:

- 581 (a) a worker's maximum weekly working time (including overtime)¹⁸;
- 582 (b) health assessments for night workers, and for such workers to be transferred to day work if a registered medical practitioner so advises¹⁹;
- 583 (c) a worker's entitlement to adequate rest breaks where the pattern according to which an employer organises work is such as to put the health and safety of a worker employed by him at risk, in particular because the work is monotonous²⁰;
- 584 (d) records to be kept (and retained) by an employer adequate to show whether the limit specified in head (a) above and the requirements as to health assessments in head (b) above are being complied with in the case of each worker employed by him in relation to whom they apply²¹;
- 585 (e) a worker's entitlement to regular rest periods which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns,

- he does not cause injury to himself, to fellow workers or to others and that he does not damage his health, either in the short term or in the longer term²²;
- 586 (f) a worker's entitlement to annual leave and to payment for such leave²³;
- 587 (g) a worker's entitlement to a rest period or annual leave under separate provision (including a provision of his contract)²⁴;
- 588 (h) various exceptions to the above requirements for special cases of work and of worker²⁵;
- 589 (i) the requirement for an employer to provide the Maritime and Coastguard Agency with such information as the Secretary of State (acting through the Agency) may specify in writing²⁶;
- 590 (j) offences for which an employer who fails to comply with the requirements is liable²⁷;
- 591 (k) a worker's right to present a complaint to an employment tribunal that his employer has refused to permit him to exercise any right he has in relation to working time or has failed to pay him the whole or any part of any amount due to him under head (f) above²⁸;
- 592 (l) restrictions imposed on the contracting out of the requirements relating to working time²⁹.

A person who is serving as master of a specified class of passenger craft operating on inland waterways or on some short coastal voyages³⁰ and who is not a person to whom other working time regulations apply³¹ must comply with the self-employed master's working hours code³².

1 le the Working Time Regulations 1998, SI 1998/1833 (as to which see **EMPLOYMENT** vol 39 (2009) PARA 244 et seq). See also note 5.

2 See the European Agreement on the organisation of working time of seafarers dated 30 September 1998 and put into effect by EC Council Directive 1999/63 of 21 June 1999 (OJ L167, 02.07.1999, p 33) concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association and the Federation of Transport Workers' Unions in the European Union; and EC Directive 1999/95 of the European Parliament and of the Council of 13 December 1999 (OJ L14, 20.01.2000, p 29) concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports, which are implemented in Great Britain by the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125 (see the text and notes 5-13). See also note 5.

3 See the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713; and PARA 626. See also note 5.

4 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049 (see the text and notes 14-29). See also note 5.

5 The Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, apply to sea-going United Kingdom ships wherever they may be, being ships other than fishing vessels, pleasure vessels, and offshore installations whilst on their working stations: reg 3(1) (amended by SI 2004/1469). For these purposes, 'United Kingdom ship' means a ship which is a United Kingdom ship within the meaning of the Merchant Shipping Act 1995 s 85(2) (see PARA 591 note 4) or is a hovercraft registered under the Hovercraft Act 1968 (see PARA 390 et seq); and 'offshore installation' means any installation which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation: Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, reg 2(1). 'Sea-going' means a ship certificated by the competent authority (which, in relation to the United Kingdom, is the Maritime and Coastguard Agency, an executive agency of the Department of Transport) for navigation at sea: reg 2(1), (2) (definition amended by SI 2004/1469). As to the Maritime and Coastguard Agency see PARA 56. As to the meaning of 'United Kingdom' see PARA 17 note 3. For these purposes, 'pleasure vessel' means:

913 (1) any vessel which is wholly owned by an individual or individuals and used only for the sport or pleasure of the owner or the immediate family or friends of the owner, or is owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends; and is on a voyage or excursion which is one for which the owner is not paid for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion; or

914 (2) any vessel wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of the club or their immediate family; and for the use of which any charges levied are paid into club funds and applied for the general use of the club; and

915 (3) in the case of any vessel referred to in head (1) or head (2), no payments other than those mentioned are made by or on behalf of the users of the vessel, other than by the owner;

and, for these purposes, 'immediate family' means, in relation to an individual, the spouse or civil partner of the individual, and a brother, sister, ancestor or lineal descendant of that individual or that individual's spouse or civil partner: Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, reg 2(1) (definition amended by SI 2005/2114).

The Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, reg 15 (see note 13) and reg 16 (see note 13) apply also to sea-going ships other than United Kingdom ships, when they are in a United Kingdom port or in United Kingdom waters: see reg 3(1). However, the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, do not apply to any seafarer who is subject to any requirement contained in the Working Time Regulations 1998, SI 1998/1833 (as to which see **EMPLOYMENT** vol 39 (2009) PARA 244 et seq) or the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, or the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713 (see PARA 626): Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, reg 3(2) (amended by SI 2003/3049; SI 2004/1713).

The Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, are made under the powers contained in the Merchant Shipping Act 1995 ss 85, 86 (see PARAS 591, 592) except in respect of some amendments, where the power is provided by the European Communities Act 1972 s 2(2).

6 Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, reg 4. The minimum hours of rest are specified in reg 5. However, the hours so specified may be altered if the Maritime and Coastguard Agency authorises a collective agreement or workforce agreement permitting exceptions to those limits: see reg 6, Sch 1. Also, the master of a ship may require a seafarer to work any hours of work necessary for the immediate safety of the ship, persons on board ship or cargo or for the purpose of giving assistance to another ship or to a person in distress at sea: see reg 8.

7 See the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, reg 7.

8 See the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, reg 9.

9 See the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, reg 10. However, a seafarer of the age of 16 or 17 may work at night if the work forms part of an established programme of training the effectiveness of which would be impaired by the prohibition set out in head (3) in the text: see reg 10.

10 See the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, reg 11.

11 See the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, reg 12. The leave to which a seafarer is entitled under head (5) in the text may be taken in instalments and may not be replaced by a payment in lieu, except where the worker's employment is terminated: see reg 12.

12 See the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, reg 13.

13 Contravention of the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, is an offence: see reg 20. An inspector has powers to inspect any United Kingdom ship and if, after inspection, he is satisfied that there has been a failure to comply with the requirements of reg 4 (see the text and notes 5-6), reg 7 (see head (1) in the text) or reg 9 (see head (2) in the text), in relation to that ship, he may detain the ship so long as he does not, in the exercise of such powers, detain or delay the ship unreasonably: see reg 14. Similar powers of inspection are available in relation to a ship which is not a United Kingdom ship but which has called voluntarily at a United Kingdom port: see reg 15 (amended by SI 2004/1469). If any such inspection under the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, reg 15 reveals that any of the requirements of reg 4, reg 7 or reg 9 are not being complied with in respect of a ship the relevant inspector must, in the case of deficiencies which are clearly hazardous to the safety or health of seafarers, take the measures necessary to ensure that such deficiencies are rectified, and may detain the ship until deficiencies have been rectified or the seafarers in question have been sufficiently rested: see the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, reg 16. The Maritime and Coastguard Agency must ensure the publication, at least every month, of specified information concerning ships to which regs 15 and 16 apply which during the previous month have been detained in a port in the United Kingdom: see reg 19. Provisions of the Merchant Shipping Act 1995 dealing with the enforcement of detention (ie s 284(1)-(5), (8) (see PARA 1253)), with references of detention notices to arbitration (ie s 96 (see PARA 1205)) and with compensation in relation to an invalid detention (ie s 97 (see PARA 1206)), are applied with modifications: see the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, regs 17, 18. As to offences see also PARA 1173.

14 In the waters of category A, B, C or D as categorised in Merchant Shipping Notice 1776(M): see the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 3(1). Merchant Shipping Notice 1776(M) (Categorisation of Waters: Notice to Owners, Operators and Masters) (March 2003) is published by the Maritime and Coastguard Agency.

15 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 3(1).

16 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 3(2).

17 In the by the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, which implement EC Directive 2003/88 of the European Parliament and of the Council of 4 November 2003 (OJ L299, 18.11.2003, p 9) concerning certain aspects of the organisation of working time (as to which see **EMPLOYMENT** vol 39 (2009) PARA 243). The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, are made under the powers contained in the Merchant Shipping Act 1995 ss 85, 86 (see PARAS 591-592) except in respect of the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 18 (see head (k) in the text) and some of the amendments, where the power is provided by the European Communities Act 1972 s 2(2).

18 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 6.

19 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 7.

20 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 8.

21 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 9.

22 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 10. The entitlement in head (e) in the text does not apply where the worker's activities are affected by an occurrence due to unusual and unforeseeable circumstances (beyond the control of the worker's employer) or by exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer, or by an accident or the imminent risk of an accident: see regs 10, 14(d).

23 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 11. The leave may be taken in instalments and may not be replaced by a payment in lieu, except where the worker's employment is terminated: see reg 11(3). The entitlement is proportionately reduced for workers employed for less than one year: reg 11(2).

24 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 12.

25 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 5, Pt 3 (regs 13-15).

26 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 16.

27 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 17. As to offences see also PARA 1173.

28 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 18. See note 17.

29 See the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 19.

30 In a craft which is either a United Kingdom ship which is a passenger ship of Class IV (Vessels engaged only on voyages in waters of category A, B, C or D), Class V (Vessels engaged only on voyages in waters of category A, B or C), Class VI (Vessels carrying not more than 250 passengers engaged on voyages to sea or in waters of category A, B, C or D, in favourable weather and during restricted periods, in the course of which the vessels are at no time more than 15 miles, exclusive of waters of category A, B, C or D, from their point of departure or more than 3 miles from land) or Class VI(A) (Vessels carrying not more than 50 passengers engaged on voyages over a distance of not more than 6 miles to or from isolated communities on the islands or coast of the United Kingdom and in the course of which they are never more than 3 miles from land), or a hovercraft carrying more than 12 passengers: see the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 28(a); and PARA 499. As to the classification of categories of passenger ship generally see PARA 599 note 4.

31 See the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 28(b); and PARA 499. The regulations referred to in the text are the Working Time Regulations 1998, SI 1998/1833 (as to which see **EMPLOYMENT** vol

39 (2009) PARA 244 et seq), the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125 (as to which see the text and notes 5-13), and the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049 (as to which see the text and notes 14-29): see the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 28(b); and PARA 499.

32 See the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 29; and PARA 499.

UPDATE

625 Shipping- and maritime-related measures of the European Community

NOTE 2--The Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) set out in Directive 1999/63 amended in accordance with the adoption by the ILO of the Maritime Labour Convention 2006: EC Council Directive 2009/13 (OJ L124, 20.5.2009, p 30): art 2.

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626. Hours of work for sea-fishermen.

In relation to United Kingdom fishing vessels¹, wherever they may be², provision is made³ in relation to:

- 593 (1) a worker's maximum weekly working time (including overtime)⁴;
- 594 (2) a worker's entitlement to adequate and regular rest periods which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, a worker does not cause injury to himself, to fellow workers or to others and that he does not damage his health, either in the short term or in the longer term⁵;
- 595 (3) health assessments for night workers, and for such workers to be transferred to day work if a registered medical practitioner so advises⁶;
- 596 (4) a worker's entitlement to reasonable rest breaks where the pattern according to which an employer organises work is such as to put the health and safety of a worker employed by him at risk, in particular because the work is monotonous or the work-rate is predetermined⁷;
- 597 (5) records to be kept (and retained) by an employer adequate to show whether the limit specified in head (1) above, the requirements as to rest breaks specified in head (2) above and the requirements as to health assessments in head (3) above are being complied with in the case of each worker employed by him in relation to whom they apply⁸;
- 598 (6) a worker's entitlement to annual leave and to payment for such leave⁹;
- 599 (7) a worker's entitlement to a rest period or annual leave under separate provision (including a provision of his contract)¹⁰;
- 600 (8) exceptions to the above requirements for objective or technical reasons or for reasons concerning the organisation of work¹¹, or where the master of a fishing vessel requires a worker to work any hours of work necessary for the immediate safety of the fishing vessel, persons on board the fishing vessel or cargo or for the purpose of giving assistance to another ship or to a person in distress at sea¹²;
- 601 (9) the requirement for an employer to provide (via the Maritime and Coastguard Agency) such information on night workers as the Secretary of State may specify in writing¹³;
- 602 (10) offences for which an employer who fails to comply with the requirements is liable¹⁴;
- 603 (11) a worker's right to present a complaint to an employment tribunal that his employer has refused to permit him to exercise any right he has in relation to working time or has failed to pay him the whole or any part of any amount due to him under head (6) above¹⁵;
- 604 (12) restrictions imposed on the contracting out of the requirements relating to working time¹⁶.

As from a day to be appointed, the following provisions have effect in relation to hours of work for sea-fishermen¹⁷.

The Secretary of State may make regulations¹⁸ prescribing maximum periods of duty and minimum periods of rest for seamen¹⁹ employed in United Kingdom fishing vessels²⁰; and such

regulations may make different provision for different descriptions of fishing vessels or seamen employed in them or for fishing vessels and seamen of the same description in different circumstances²¹. If any provision of regulations so made is contravened²² in the case of any seaman employed in a fishing vessel, the persons employing him and the master²³ are each liable on summary conviction to a fine not exceeding level 4 on the standard scale²⁴.

1 For these purposes, 'United Kingdom fishing vessel' means a sea-going fishing vessel which is registered in the United Kingdom: Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, reg 2(1). As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, reg 3(1). The provisions of reg 7 (see head (2) in the text), reg 16 (see note 14) and reg 17 (see note 14) apply to fishing vessels registered in member states other than the United Kingdom when they are within United Kingdom waters: reg 3(2).

3 See the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, which implement EC Directive 2003/88 of the European Parliament and of the Council of 4 November 2003 (OJ L299, 18.11.2003, p 9) concerning certain aspects of the organisation of working time (as to which see **EMPLOYMENT** vol 39 (2009) PARA 243). The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, are made under the powers contained in the Merchant Shipping Act 1995 ss 85, 86 (see PARAS 591, 592) except in respect of the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, reg 19 (see head (11) in the text) and some of the amendments, where the power is provided by the European Communities Act 1972 s 2(2).

4 See the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, reg 6.

5 See the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, reg 7.

6 See the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, reg 8.

7 See the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, reg 9.

8 See the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, reg 10.

9 See the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, reg 11. The leave may be taken in instalments and may not be replaced by a payment in lieu, except where the worker's employment is terminated: see reg 11(3). The entitlement is proportionately reduced for workers employed for less than one year: reg 11(2).

10 See the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, reg 12.

11 See the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, regs 5, 13.

12 See the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, regs 5, 14.

13 See the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, reg 15. As to the Secretary of State see PARA 38.

14 Contravention of the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, is an offence: see reg 18. Where a relevant inspector is of the opinion that the requirements of reg 7 (see head (2) in the text) have not been complied with in respect of any worker on a fishing vessel, and a hazard to the health or safety of any worker is thereby created, the fishing vessel may be detained until the worker has had sufficient rest to resume his duties without creating a hazard to the health or safety of any worker; but this power of detention may not be exercised unreasonably: see reg 16. Provisions of the Merchant Shipping Act 1995 dealing with the enforcement of detention (ie s 284(1)-(6), (8) (see PARA 1253)), with references of detention notices to arbitration (ie s 96 (see PARA 1205)) and with compensation in relation to an invalid detention (ie s 97 (see PARA 1206)), are applied with modifications: see the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, regs 16, 17. As to offences see also PARA 1173.

15 See the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, reg 19.

16 See the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, reg 20.

17 The Merchant Shipping Act 1995 s 115 does not have effect until the Secretary of State by order appoints a day for s 115 to come into force: see s 314(3), Sch 14 para 5(1), (2); and PARA 16 note 1. However, at the date at which this volume states the law, no such order had been made.

18 As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41; and as to the Secretary of State's power to make regulations prescribing fees to be charged in respect of the issue or recording of any certificate, licence or other document see PARA 62.

19 As to the meaning of 'seaman' see PARA 424.

20 As to the meaning of 'United Kingdom fishing vessel' for these purposes see PARA 230; and as to the meaning of 'fishing vessel' see PARA 230 note 9.

21 Merchant Shipping Act 1995 s 115(1). See note 17. As to the Secretary of State's power to grant exemptions under Pt V Ch I (ss 109-120) see PARA 425.

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 115 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 115 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 46 et seq.

22 As to the meaning of 'contravention' see PARA 50 note 3.

23 As to the meaning of 'master' see PARA 424.

24 Merchant Shipping Act 1995 s 115(2). See note 17. As to the meaning of 'standard scale' see PARA 1099.

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627. Duty to supply adequate provisions and water.

It is the duty of the employer and master of every sea-going United Kingdom ship, other than a ship under 24 metres in length, a pleasure vessel, a submersible craft or an offshore installation whilst on or within 500 metres of its working station, to ensure that there are provided on their ship provisions and water¹, which:

- 605 (1) are suitable in respect of quantity, nutritive value, quality and variety having regard to the size of the crew and the character and nature of the voyage²;
- 606 (2) do not contain anything which is likely to cause sickness or injury to health or which renders any provision or water unpalatable³; and
- 607 (3) are otherwise fit for consumption⁴.

It is the duty of the master to ensure that he, or a person authorised by him, together with a member of the crew employed in catering on the ship, inspects not less than once a week provisions and water for the purpose of checking whether the provisions and water still comply with heads (1) to (3) above; and the results of such inspections must be recorded in the official log book⁵ of the ship⁶.

Contravention of the above requirements is an offence⁷; and the ship may be detained until the health and safety of all employees and other persons aboard the ship are secured if, after inspection, an inspector is satisfied that there has been a failure to comply, in relation to that ship, with the above requirements; but the inspector must not, in the exercise of such powers, detain or delay the ship unreasonably⁸. An inspector has similar powers in relation to such a ship which is not a United Kingdom ship when it is in a United Kingdom port⁹. Provision is made in relation to a ship so detained as to liability for costs and compensation for the detention of, and enforcing the detention of, the ship¹⁰.

1 See the Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102, regs 3(1)(a), (2), 4 (reg 3(2) amended by SI 1993/1072). As to complaints about provisions or water see PARA 487.

The Secretary of State may grant exemptions from all or any of the provisions of the Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102, as may be specified in the exemption, for classes of cases or individual cases on such terms, if any, as he may so specify and may, subject to giving reasonable notice, alter or cancel any such exemption: reg 3(3). As to the Secretary of State see PARA 38.

2 Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102, reg 4(a).

3 Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102, reg 4(b).

4 Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102, reg 4(c).

5 As to the ship's official log book see PARAS 531-533.

6 Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102, reg 5.

7 See the Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102, regs 6, 7. See also PARA 1174.

8 See the Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102, reg 8.

9 See the Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102, regs 3(1)(b), (2), 9.

10 See the Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102, reg 10. Those provisions of the Merchant Shipping Act 1995 which deal with the enforcement of detention (ie s 284(1)-(6), (8) (see PARA 1253)), with references of detention notices to arbitration (ie s 96 (see PARA 1205)) and with compensation in relation to an invalid detention (ie s 97 (see PARA 1206)), are applied with modifications: see the Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102, reg 10; Interpretation Act 1978 s 17(2)(b).

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628. Duty to carry a ship's doctor.

It is the duty of the owner¹ of a United Kingdom ship, having more than 100 persons on board and engaged on an international voyage of more than three days or on a voyage during which it is more than one and a half days' sailing time from a port with adequate medical equipment, to ensure that the ship carries a qualified doctor².

Any contravention of this duty is an offence³.

1 For these purposes, 'owner', in relation to a ship, means the registered owner of the ship unless that ship has been chartered by demise or is managed, either wholly or in part, by a person other than the registered owner under the terms of a management agreement; in that case 'owner' includes the demise charterer or person managing the ship, as the case may be: Merchant Shipping (Ships' Doctors) Regulations 1995, SI 1995/1803, reg 2(1).

2 Merchant Shipping (Ships' Doctors) Regulations 1995, SI 1995/1803, reg 3. For these purposes, 'qualified doctor' means a fully registered person within the meaning of the Medical Act 1983 s 55 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 3): Merchant Shipping (Ships' Doctors) Regulations 1995, SI 1995/1803, reg 2(1). As from a day to be appointed, the definition of 'qualified doctor' given in reg 2(1) is amended with the addition of the phrase 'who holds a licence to practise': see reg 2(1) (prospectively amended by SI 2002/3135). However, at the day at which this volume states the law, no such day had been appointed.

3 See the Merchant Shipping (Ships' Doctors) Regulations 1995, SI 1995/1803, reg 4; and PARA 1175.

UPDATE

628 Duty to carry a ship's doctor

NOTE 2--Appointed day is 16 November 2009: London Gazette, 21 August 2009.

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629. Requirement for seafarers to hold valid medical fitness certificate.

No person may employ a seafarer¹ in a sea-going United Kingdom ship wherever it may be² unless that seafarer is the holder of a valid medical fitness certificate³; and no person may employ a seafarer in such a ship in a capacity or in a geographical area precluded by any restriction in that seafarer's medical fitness certificate⁴. Further provision is made which allows for:

- 608 (1) certain other medical certificates to be treated as equivalent⁵;
- 609 (2) the issue of medical fitness certificates, on payment of the prescribed fee, by medical practitioners approved by the Secretary of State⁶;
- 610 (3) the period of validity of medical fitness certificates⁷, for the suspension or cancellation of certificates in specified circumstances⁸, and for the review of a refusal of a medical fitness certificate, or the suspension or cancellation of a certificate, by a medical referee appointed by the Secretary of State⁹;
- 611 (4) the transfer to day work of seafarers on watchkeeping duties who are suffering health problems due to performing work at night¹⁰;
- 612 (5) the keeping of records and the making of returns by medical practitioners¹¹; and
- 613 (6) inspection, detention, compensation and penalties¹².

1 However, the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, do not apply to any person who is subject to any requirement contained in the Working Time Regulations 1998, SI 1998/1833 (as to which see **EMPLOYMENT** vol 39 (2009) PARA 244 et seq), the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049 (see PARA 625) or the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713 (see PARA 626): see the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, reg 3(3) (substituted by SI 2004/1713).

2 See the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, reg 3(1)(a). The regulations do not apply to a fishing vessel, pleasure vessel or offshore installation whilst on its working stations: see the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, reg 3(2).

3 Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, reg 4(1). However, a seafarer, the validity of whose certificate expires while he is in a location where medical examination in accordance with the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, is impracticable, may continue to be employed without such a certificate for a period not exceeding three months from the date of expiry of such medical certificate: reg 4(2).

4 Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, reg 4(3).

5 See the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, regs 5, 6 (reg 6 amended by SI 2005/1919).

6 See the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, reg 7. As to the Secretary of State see PARA 38.

7 See the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, reg 8.

8 See the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, reg 9.

9 See the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, reg 10.

10 See the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, reg 11.

11 See the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, reg 12.

12 See the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, regs 13-17 (reg 14 amended by SI 2005/1919). Those provisions of the Merchant Shipping Act 1995 which deal with the enforcement of detention (ie s 284 (see PARA 1253)), with references of detention notices to arbitration (ie s 96 (see PARA 1205)) and with compensation in relation to an invalid detention (ie s 97 (see PARA 1206)), are applied with modifications for these purposes: see the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, regs 15, 16. As to offences see also PARA 1176. The Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, reg 14 (power to inspect and detain any ship, which is not a United Kingdom ship, when the ship is in a United Kingdom port), reg 15 (enforcement of detention) and reg 16 (compensation) apply to sea-going ships, other than United Kingdom ships, when they are in a United Kingdom port or in United Kingdom waters: see reg 3(1)(b).

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630. Requirement to carry on board prescribed medical stores.

Every United Kingdom ship and government ship (other than a ship employed in inland navigation, a pleasure vessel used for non-commercial purposes and not manned by a professional crew, or a tug¹ operating in harbour areas)² must carry on board prescribed medical stores³.

All medical stores required to be so kept on board a vessel:

- 614 (1) must conform to the standards and requirements of the British National Formulary, the British Pharmacopoeia, the European Pharmacopoeia or the United States Pharmacopoeia⁴;
- 615 (2) must be properly packaged and labelled⁵, stored⁶ and replenished⁷.

Every such ship must carry guides as to the use of medical stores required to be so carried on board it appropriate to their categories, including in particular specified instructions⁸ for the use of antidotes⁹.

The owner¹⁰ of such a ship must ensure that the medical stores are inspected by a competent person or authority at least once a year to ensure that:

- 616 (a) the ship is carrying the medical stores which it is so required to carry¹¹;
- 617 (b) such medical stores are correctly stored¹²;
- 618 (c) any perishable medicines have been duly replaced¹³.

Contravention of the above requirements is an offence¹⁴; and the ship may be detained until the above requirements are met if, after inspection, an inspector is satisfied that there has been a failure so to comply, in relation to that ship¹⁵.

1 For these purposes, 'tug' means a vessel constructed solely for the purpose of, and normally used for, providing external motive power for floating objects or vessels: Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 1(3). The Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, do not apply to a small commercial vessel which has been examined, and in respect of which a certificate has been issued, in accordance with the applicable Code of Practice, or to a vessel which is operating under the phase-in arrangements of the Code of Practice: see PARA 611.

2 See the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 3. For these purposes, 'harbour area' means any harbour in the United Kingdom in respect of which a harbour authority, within the meaning of the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 619), has statutory powers or duties of improvement, maintenance or management: Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 1(3).

3 See the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 4. For these purposes, 'medical stores' includes medicines, medical equipment and antidotes: reg 1(3). The medical stores mentioned in the text are those specified in the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 4(1), Table (Table amended by SI 1996/2821): see the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 4.

4 Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 6. The medical stores must also conform to the requirements and specifications of Merchant Shipping Notice 1768(M+F), which has superseded notices 1607(M) and 1608(M): see the Merchant Shipping and Fishing

Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 6. For these purposes, 'Merchant Shipping Notice' means a Notice described as such, issued by the Secretary of State or the Maritime and Coastguard Agency, and includes a reference to any document amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice: Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 1(3). As to the Secretary of State see PARA 38; and as to the Maritime and Coastguard Agency see PARA 56. Any reference to the British Pharmacopoeia, the European Pharmacopoeia or the British National Formulary is to be construed, in its application to a particular case, as a reference to the edition thereof current at, or not more than three months before, the time in question: reg 1(4).

5 In accordance with the requirements of the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 7 (packaging and labelling of containers).

6 In accordance with the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 8 (storage of medicines).

7 In accordance with the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 9 (replenishment of dated medicines).

8 In instructions as specified in Merchant Shipping Notice 1768(M+F) (as to which see note 4): see the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 10.

9 Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 10.

10 For these purposes, 'owner', in relation to a ship, means the registered owner of the ship unless the ship has been chartered by demise or is managed, either wholly or in part, by a person other than the registered owner under the terms of a management agreement; in that case 'owner' includes the demise charterer or the person managing the ship, as the case may be: Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 1(3).

11 Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 11(a). The text refers to the medical stores required to be carried by reg 4 (see the text and notes 1-3): see reg 11(a).

12 Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 11(b).

13 Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 11(c). The text refers to perishable medicines replaced in accordance with the requirements of reg 9 (see note 7): see reg 11(c).

14 See the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, regs 12, 13. See also PARA 1177.

15 See the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 14. Those provisions of the Merchant Shipping Act 1995 which deal with the enforcement of detention (ie s 284 (see PARA 1253)) are applied with modifications for these purposes: see the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, reg 15; Interpretation Act 1978 s 17(2)(b).

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C. GENERAL SAFETY REQUIREMENTS

631. Requirement to carry code of safe working practices.

In every United Kingdom ship¹, except fishing vessels and pleasure vessels², on which five or less workers³ are employed, the company⁴ must ensure that there is carried at least one copy of the Code of Safe Working Practices for Merchant Seamen⁵, to be kept in the custody of the master, which must be easily accessible and readily available to all workers⁶.

In every such ship on which more than five and no more than 20 workers are employed, the company must ensure that there is carried a suitable number of copies of the Code⁷, of which:

- 619 (1) one copy must be kept in the custody of the master⁸;
- 620 (2) one copy must be kept in the custody of the safety officer⁹; and
- 621 (3) one copy must be provided for safety representative (where elected)¹⁰; and in addition
- 622 (4) one or more copies must be kept in a place readily accessible to other workers¹¹,

provided that no person is to be required to hold more than one copy of the Code¹².

In every such ship on which more than 20 workers are employed, the company must ensure that there is carried a suitable number of copies of the Code, of which:

- 623 (a) one copy must be kept in the custody of the master¹³;
- 624 (b) one copy must be kept in the custody of the chief officer¹⁴;
- 625 (c) one copy must be kept in the custody of the chief engineer¹⁵;
- 626 (d) one copy must be kept in the custody of either the purser or the catering officer¹⁶;
- 627 (e) one copy must be kept in the custody of the safety officer¹⁷;
- 628 (f) one copy must be kept in the custody of each safety representative (where elected)¹⁸; and in addition
- 629 (g) a number of copies adequate for the number of other workers employed, taking into account the nature of their duties, must be readily available and kept in a place or places readily accessible to those workers¹⁹,

provided that no person is to be required to hold more than one copy of the Code²⁰.

Where, as the case may be, no safety officer or safety representative is appointed for the ship, any requirement for a safety officer or safety representative to keep a copy of the Code does not apply, and in either case the number of copies which the company is required to ensure are carried may also be reduced, so long as the total number carried is not less than a suitable number²¹.

No person is to knowingly remove a copy of the Code²² from the ship without the consent of the company or the master²³.

Contravention of the provisions which require the carrying of the Code of Safe Working Practices is an offence²⁴.

1 For these purposes, 'United Kingdom ship' means a ship which is a United Kingdom ship within the meaning of the Merchant Shipping Act 1995 s 85(2) (see PARA 591 note 4) or is a hovercraft registered under the Hovercraft Act 1968 (see PARA 390 et seq): Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 2(1).

2 In every ship to which the Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, apply: see reg 3.

3 For these purposes, 'worker' means any person employed by an employer under a contract of employment including trainees or apprentices other than trainees who are training on a sail training vessel: Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 2(1).

4 For these purposes, 'company' means the owner of a ship or any person or organisation or person such as the manager, or bareboat charterer, who has assumed the responsibility for operation of the ship from the owner: Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 2(1).

5 In the Code of Safe Working Practices for Merchant Seamen (Consolidated Edition) (2007), published by the Maritime and Coastguard Agency and The Stationery Office, and any subsequent amendments and revisions to that publication, which the Secretary of State considers relevant from time to time and which must be notified in a Marine Information Notice (being a Notice described as such and issued by the Maritime and Coastguard Agency): Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 2(1). As to the Secretary of State see PARA 38; and as to the Maritime and Coastguard Agency see PARA 56.

6 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(1).

7 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(2).

8 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(2)(a).

9 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(2)(b).

10 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(2)(c).

11 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(2)(d).

12 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(2).

13 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(3)(a).

14 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(3)(b).

15 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(3)(c).

16 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(3)(d).

17 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(3)(e).

18 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(3)(f).

19 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(3)(g).

20 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(3).

21 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(4).

22 Is a copy carried in compliance with the Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838: see reg 4(5).

23 Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 4(5).

24 See the Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 5; and PARA 1178.

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632. Compliance with the International Safety Management ('ISM') Code for large vessels.

Every company¹ must comply with the requirements of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (the 'ISM Code')² as it applies to that company and to any ship owned by it or for which it has responsibility³.

No company may operate a ship unless that company holds a valid Document of Compliance⁴ and unless there is in force in respect of that ship a valid Safety Management Certificate⁵; and no United Kingdom ship may be operated unless the company holds a Document of Compliance issued or accepted by the Secretary of State⁶, and unless there is in force in relation to the ship a Safety Management Certificate issued by him⁷.

Every company has a duty to ensure that a valid Safety Management Certificate and a copy of the Document of Compliance is carried on board each ship⁸; and the master of every ship must operate his ship in accordance with the safety management system on the basis of which the Safety Management Certificate was issued⁹.

Further provision is made in relation to:

- 630 (1) the requirement for a company to designate a person to be responsible for monitoring the safe and efficient operation of each ship with particular regard to the safety and pollution prevention aspects¹⁰;
- 631 (2) the issue of Documents of Compliance and Safety Management Certificates¹¹;
- 632 (3) annual audits of the Document of Compliance¹² and intermediate audits of the Safety Management Certificate¹³;
- 633 (4) the renewal of certificates¹⁴;
- 634 (5) powers of audit, inspection, suspension of service and detention of the ship¹⁵;
- 635 (6) the Secretary of State's power to grant exemptions from the provisions for classes of cases or for individual cases¹⁶;
- 636 (7) the suspension or cancellation of Documents of Compliance and Safety Management Certificates¹⁷;
- 637 (8) offences and penalties¹⁸.

All owners of a ro-ro ferry¹⁹ (or any other organisation or person such as the manager, or the bareboat charterer, who has assumed responsibility for operating the ro-ro ferry from the owner)²⁰ must comply with all the relevant provisions of the ISM Code²¹, as if the provisions thereof were mandatory, as a requirement for their vessels to provide regular services to or from a port of a member state of the Community²²; and a failure so to comply is an offence²³. For these purposes, provision is made in relation to powers of inspection, suspension of service and detention of the ship²⁴, and to allow for the suspension or cancellation of documents of compliance or safety management certificates issued by the Secretary of State²⁵.

1 For these purposes, 'company' means the owner of a ship to which the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, apply (or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for the operation of the

ship from the owner): reg 2(1). The Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, apply to:

- 916 (1) United Kingdom ships, wherever they may be, and other ships while they are within United Kingdom waters (see reg 3(1));
- 917 (2) passenger ships of Classes I, II and II(A) (see reg 3(2)(a)(i));
- 918 (3) oil tankers, chemical tankers, gas carriers, bulk carriers, and cargo high speed craft, of 500 tons or more, which engage in international voyages (see reg 3(2)(a)(ii));
- 919 (4) other cargo ships and mobile offshore drilling units, of 500 tons or more, which engage in international voyages (see reg 3(2)(b)); and
- 920 (5) a passenger ship which is a high speed craft to which the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARA 614 et seq) apply (see the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 3(2)(c) (amended by SI 2004/302)).

As to the meaning of 'United Kingdom' see PARA 17 note 3. For these purposes, 'United Kingdom ship' means a ship which is a United Kingdom ship within the meaning of the Merchant Shipping Act 1995 s 85(2) (see PARA 591 note 4) or is a hovercraft registered under the Hovercraft Act 1968 (see PARA 390 et seq): Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 2(1). 'Passenger ships of Classes I, II and II(A)' means passenger ships so classified within the meaning of the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514 (see PARA 599 note 4): Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 2(1); Interpretation Act 1978 s 17(2)(b).

As to passenger ships (other than ships engaged on international voyages) for which separate provision is made see PARA 633.

The Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, apply to every company operating a ship to which those regulations apply (see reg 3(3)), except those companies and ships to which EC Council Regulation 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries) (OJ L320, 30.12.1995, p 14) applies (as to which see the text and notes 19-25) (see the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 3(4)).

2 The International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the International Maritime Organisation (the 'IMO') by Resolution A.741 (18): see the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 2(1). As to the International Maritime Organisation (the 'IMO') see PARA 13.

3 Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 4.

4 Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 5(1). For these purposes, a Document of Compliance is not valid if it has not been indorsed, in the circumstances required by the ISM Code, showing satisfactory annual audits (see head (3) in the text): see reg 5(4). For these purposes, 'Document of Compliance' means the Document of Compliance referred to in SOLAS Ch IX (Management for the Safe Operation of Ships) reg 4: see the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 2(1). 'SOLAS' means the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874), with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277) (as to which see PARA 8): see the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 2(1).

5 Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 5(2). For these purposes, a Safety Management Certificate is not valid if it has not been indorsed, in the circumstances required by the ISM Code, showing a satisfactory intermediate audit (see head (3) in the text): see reg 5(4). For these purposes, 'Safety Management Certificate' means the Safety Management Certificate referred to in SOLAS Ch IX (Management for the Safe Operation of Ships) reg 4: see the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 2(1).

6 Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 5(3)(a). As to the Secretary of State see PARA 38.

7 Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 5(3)(b).

8 See the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 6.

9 See the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 7.

10 See the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 8.

11 See the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 9. As to interim certificates see reg 10; as to the issue and endorsement of Safety Management Certificates by another government see reg 11; and as to the issue of certificates on behalf of other governments see reg 12.

12 See the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 13.

13 See the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 14.

14 See the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 15.

15 See the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 16 (amended by SI 2001/3209).

16 See the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 17.

17 See the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 18.

18 See the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 19, 20.

19 For these purposes, 'ro-ro ferry' means a seagoing passenger vessel with facilities to enable road or rail vehicles to roll on and roll off the vessel, and carrying more than 12 passengers: see EC Council Regulation 3051/95 of 8 December 1995 (OJ L320, 30.12.1995, p 14) art 2(a); definition applied by virtue of the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, reg 2(2). The Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, implement EC Council Regulation 3051/95 of 8 December 1995 (OJ L320, 30.12.1995, p 14) on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries) (amended by EC Commission Regulation No 179/98 of 23 January 1998 (OJ L19, 24.01.1998, p 35); EC Council Regulation 1970/2002 of 4 November 2002 (OJ L302, 06.11.2002, p 3); and European Parliament and EC Council Regulation 2099/2002 of 5 November 2002 (OJ L324, 29.11.2002, p 1)); and the regulations apply to any company operating at least one ro-ro ferry to or from a port in the United Kingdom on a regular service, and to any ship operating on such a service: see the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, reg 2(4). For these purposes, 'regular service' means a series of ro-ro ferry crossings operated so as to serve traffic between the same two or more points, either according to a published timetable or with crossings so regular or frequent that they constitute a recognizable systematic series: see EC Council Regulation 3051/95 of 8 December 1995 (OJ L320, 30.12.1995, p 14) art 2(b); definition applied by virtue of the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, reg 2(2).

20 Ie any company as defined by EC Council Regulation 3051/95 of 8 December 1995 (OJ L320, 30.12.1995, p 14) art 2(c) (definition applied by virtue of the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, reg 2(2)).

21 Ie, for these purposes, the ISM Code paras 1.2 to 13.1 and 13.6: see EC Council Regulation 3051/95 of 8 December 1995 (OJ L320, 30.12.1995, p 14) art 4(1); Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, reg 3.

22 The text refers to the requirement for companies to comply with EC Council Regulation 3051/95 of 8 December 1995 (OJ L320, 30.12.1995, p 14) art 4(1): see the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, reg 3.

23 See the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, reg 3; and PARA 1179.

24 See the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, reg 4. Any contravention of reg 4 is an offence: see reg 4; and PARA 1179.

25 See the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, reg 5 (amended by SI 2001/3209). The text refers to documents of compliance and safety management certificates issued by the Secretary of State pursuant to EC Council Regulation 3051/95 of 8 December 1995 (OJ L320, 30.12.1995, p 14): see the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, reg 5 (as so amended). Any contravention of reg 5 is an offence: see reg 5 (as so amended); and PARA 1179.

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633. Compliance with the safety management code for small vessels.

A company¹ must comply with the requirements of the Safety Management Code for Domestic Passenger Ships² as it applies to that company and to any ship³ owned by it or for which it has operational responsibility⁴; and a company must ensure that a valid Domestic Ship Safety Management Certificate⁵ held in relation to the ship is carried on board each ship owned by it or for which it has operational responsibility⁶.

The master of a ship must operate that ship in accordance with the safety management system on the basis of which the Domestic Ship Safety Management Certificate was issued in relation to the ship⁷.

The Secretary of State may grant exemptions from all or any of these provisions⁸ (as may be specified in the exemption) for individual cases or classes of case on such terms (if any) as he may specify, if he is satisfied that compliance with such provision is either impracticable or unreasonable in that case or cases, and if he is satisfied that the exemption is subject to such conditions and limitations as will provide a level of safety equivalent to that provided by the provision or provisions from which exemption is being granted⁹.

Further provision is made requiring a company to designate a person to be responsible for monitoring the safe and efficient operation of each ship¹⁰, and in relation to powers of inspection conferred on authorised persons¹¹, the suspension of a Domestic Ship Safety Management Certificate where an authorised person considers that a ship is unable to operate without creating a risk of serious danger to safety of life, and the detention of a ship which does not comply with the code or with requirements related to such a certificate¹².

Any contravention of these provisions is an offence¹³.

1 For these purposes, 'company', in relation to a ship, means the owner (or any other organisation or person such as the operator, manager, or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner): Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 2.

2 For these purposes, 'Safety Management Code for Domestic Passenger Ships' means the Safety Management Code for Small Vessels set out in Merchant Shipping Notice 1754(M) (Safety Management Code for Domestic Passenger Ships of Classes III-VI (A)), where 'Merchant Shipping Notice' means a Notice described as such and issued by the Maritime and Coastguard Agency, and includes a reference to any such document amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time: Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 2. As to the Secretary of State see PARA 38; and as to the Maritime and Coastguard Agency see PARA 56.

3 The Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, apply to passenger ships (other than ships engaged on international voyages) which are categorised as follows:

921 (1) Class III (ships engaged only on voyages in the course of which they are at no time more than 70 miles by sea from their point of departure nor more than 18 miles from the coast of the United Kingdom, and which are at sea only in favourable weather and during restricted periods) (see reg 3(1), Table);

922 (2) Class IV (ships engaged only on voyages in Category A, B, C or D waters) (see reg 3(1), Table);

- 923 (3) Class V (ships engaged only on voyages in Category A, B or C waters) (see reg 3(1), Table);
- 924 (4) Class VI (ships engaged only on voyages, carrying not more than 250 passengers, to sea or in Category A, B, C or D waters, in all cases in favourable weather and during restricted periods, in the course of which the ships are at no time more than 15 miles, exclusive of any Category A, B, C or D waters, from their point of departure nor more than three miles from land) (see reg 3(1), Table);
- 925 (5) Class VI(A) (ships carrying not more than 50 passengers for a distance of not more than six miles on voyages to or from isolated communities on the islands or coast of the United Kingdom and which do not proceed for a distance of more than three miles from land) (see reg 3(1), Table).

As to the meaning of 'United Kingdom' see PARA 17 note 3. For these purposes, 'passenger ship' means a ship carrying more than 12 passengers and propelled by electricity or other mechanical power; 'passenger' means any person carried in a ship except a person employed or engaged in any capacity on board the ship on the business of the ship, a person on board the ship either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons, or by reasons of any circumstances that neither the master nor the company could have prevented, and a child under one year of age; and 'restricted period' means a period falling wholly within the limits from 1 April to 31 October (both dates inclusive), and between one hour before sunrise and one hour after sunset in the case of ships fitted with navigation lights conforming to the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75 (as to which see PARA 715 et seq) and between sunrise and sunset in the case of any other ships: Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 2. 'Category A, B, C or D waters' means the waters specified as such in Merchant Shipping Notice 1776(M), and cognate expressions are to be construed accordingly: Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 2. Merchant Shipping Notice 1776(M) (Categorisation of Waters: Notice to Owners, Operators and Masters) (March 2003) is published by the Maritime and Coastguard Agency and it categorises United Kingdom waters which are not regarded as 'sea' for the purposes of merchant shipping legislation (excepting marine pollution). As to the classification of categories of passenger ship generally see PARA 599 note 4.

The Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, do not apply to those companies and ships to which EC Council Regulation 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries) (OJ L320, 30.12.1995, p 14) (as to which see PARA 632) applies: Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 3(2). Nor do those regulations apply to a high speed craft as defined in the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARA 614 et seq): Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 3(3) (added by SI 2004/302).

4 Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 5.

5 For these purposes, 'Domestic Ship Safety Management Certificate' means a certificate issued by the Maritime and Coastguard Agency in accordance with the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209; and 'valid Domestic Ship Safety Management Certificate' means such a certificate which has not expired, or ceased to be valid in accordance with reg 6(3) (see note 6) (or which having so ceased to be valid has subsequently been endorsed as valid in accordance with reg 6(4) (see note 6)), and which is not suspended in accordance with reg 9 (as to which see the text and notes 11, 12): reg 2.

6 Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 6(5). As to the issue of Domestic Ship Safety Management Certificates see reg 6(1), (2); as to when such a certificate may cease to be valid see reg 6(3); and as to the endorsement of a certificate which has ceased to be valid see reg 6(4).

7 Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 7.

8 In all or any of the provisions of the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209: see reg 4(1).

9 Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 4(1). The Secretary of State may, on giving reasonable notice, alter or cancel any exemption granted under reg 4(1): reg 4(2).

10 See the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 8.

11 For these purposes, 'authorised person' means a surveyor of ships or person authorised by the Secretary of State to carry out audits and inspections for the purpose of the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209: reg 2.

12 See the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 9.

13 See the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 10; and PARA 1180.

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634. Requirement for a safe manning document.

It is the duty of the company¹ to ensure that in relation to every ship² of 500 gross tons or more³:

- 638 (1) a safe manning document⁴ is in force in respect of the ship and the manning of the ship⁵;
- 639 (2) the safe manning document is kept on board the ship at all times⁶; and
- 640 (3) the manning of the ship is maintained at all times to at least the levels specified in the safe manning document⁷.

The master of any such ship⁸ must ensure that the ship does not proceed to sea unless there is on board a valid safe manning document issued in respect of the ship and the manning of the ship complies with that document⁹.

It is the duty of a company applying for a safe manning document in respect of any United Kingdom ship to submit to the Maritime and Coastguard Agency proposals as to the numbers and grade of personnel it considers should be carried so that the ship would be safely manned if it proceeded to sea on any intended voyages¹⁰; and it is the duty of the company after the issue of a safe manning document to inform the Maritime and Coastguard Agency as soon as any of the circumstances which are pertinent to that safe manning document change, for the purpose of enabling the Maritime and Coastguard Agency to review the document's continuing validity or approve fresh proposals from the company¹¹.

Any company which, or any master who, contravenes the requirements imposed on him in relation to the safe manning document commits an offence¹²; and, in any case where it is found in relation to a ship that there is any such contravention, the ship may be detained¹³.

1 As to the meaning of 'company' for these purposes see PARA 497 note 2.

2 The Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, apply to sea-going ships which are United Kingdom ships (wherever they are) and other ships when in United Kingdom waters, except fishing vessels, pleasure craft as defined in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 2 (see PARA 609) and which are less than 80 gross tons or under 24 metres in length, and vessels to which the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, do not apply by virtue of the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 5(3) (see PARA 611): Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 3 (amended by SI 1997/1911); Interpretation Act 1978 s 17(2)(b). For these purposes, 'sea-going' means going beyond the limits of waters of category A, B, C and D as categorised in Merchant Shipping Notice 1776(M), where 'Merchant Shipping Notice' means a Notice described as such and issued by the Maritime and Coastguard Agency, and any reference to a particular Merchant Shipping Notice includes any amendment to that Notice which the Secretary of State considers relevant from time to time and specifies in a Merchant Shipping Notice: see the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 2(1), (2). Merchant Shipping Notice 1776(M) (Categorisation of Waters: Notice to Owners, Operators and Masters) (March 2003) is published by the Maritime and Coastguard Agency and it categorises United Kingdom waters which are not regarded as 'sea' for the purposes of merchant shipping legislation (excepting marine pollution). As to the Secretary of State see PARA 38; and as to the Maritime and Coastguard Agency see PARA 56.

3 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 5(1). The Secretary of State may grant, on such terms, if any, as he may specify, exemptions from all or any

provisions of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, for classes of cases or individual cases, and may alter or cancel any exemptions so granted: reg 18 (amended by SI 2000/484).

4 For these purposes, 'safe manning document' means a document, described as such, issued, in the case of a United Kingdom ship by the Secretary of State, and in the case of any other ship by or on behalf of the government of the state whose flag the ship is entitled to fly: Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 2(1).

5 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 5(1)(a).

6 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 5(1)(b).

7 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 5(1)(c).

8 In any ship to which the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 5 applies (see note 2): see reg 5(2).

9 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 5(2). A person authorised by the Secretary of State may inspect any ship which is not a United Kingdom ship (see reg 15(1)); and if an authorised person finds, on inspection, a failure to comply with the safe manning document, he must notify in writing the master of the ship and, in the case of a ship registered outside the United Kingdom, the nearest maritime, consular or diplomatic representative of the flag state (Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 15(2), (3)(b)).

10 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 5(3)(a). In preparing such proposals the company must take into account any guidance issued by the Maritime and Coastguard Agency: reg 5(3)(b).

11 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 5(3)(c).

12 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17; and PARA 1133.

13 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 16; and PARA 1133.

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635. Watchkeeping arrangements.

The master and chief engineer of any sea-going ship which is a United Kingdom ship (wherever it is)¹, and any other ship when in United Kingdom waters (with certain exceptions)², must ensure that the watchkeeping arrangements for the ship are adequate for maintaining safe navigational and engineering watches³. The master of any ship which is safely moored or safely at anchor under normal circumstances in port also must arrange for an appropriate and effective watch to be maintained⁴; and if his ship is carrying hazardous cargo⁵ and is in port, even when safely moored or safely at anchor, he must, in addition to any such watchkeeping arrangements⁶:

- 641 (1) in the case of a ship carrying hazardous cargo in bulk, ensure that a safe deck watch and safe engineering watch are maintained by the ready availability on board of a duly qualified officer or officers, and where appropriate ratings⁷; and
- 642 (2) in the case of a ship carrying hazardous cargo other than in bulk, ensure that in organising safe watchkeeping arrangements he takes account of the nature, quantity, packing and stowage of the hazardous cargo and of any special conditions on board, afloat and ashore⁸.

Any master, or any chief engineer, who contravenes the requirement imposed on him to make proper watchkeeping arrangements commits an offence⁹; and, in any case where it is found in relation to a ship that there is any such contravention, the ship may be detained¹⁰.

1 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 3(a). As to the meaning of 'sea-going' for these purposes see PARA 634 note 2.

2 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 3(b) (amended by SI 1997/1911). The text refers to other ships when in United Kingdom waters except fishing vessels, pleasure craft as defined in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 2 (see PARA 609) and which are less than 80 gross tons or under 24 metres in length, and vessels to which the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, do not apply by virtue of the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 5(3) (see PARA 611): see the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 3(b) (as so amended); Interpretation Act 1978 s 17(2)(b).

3 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 11. The text refers to arrangements being made having regard to the Seafarers' Training, Certification and Watchkeeping Code (the 'STCW Code') (Section A) adopted by the 1995 Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (London, 1 December 1978 to 30 November 1979; TS 50 (1984); Cmnd 9266) (the 'STCW Convention') (as to which see PARA 8): see the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, regs 2(1), 11. Any reference to the STCW Code or the STCW Convention includes any amendment to that Convention which the Secretary of State considers relevant from time to time and specifies in a Merchant Shipping Notice, where 'Merchant Shipping Notice' means a Notice described as such and issued by the Maritime and Coastguard Agency: see the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 2(1), (2). As to the Secretary of State see PARA 38; and as to the Maritime and Coastguard Agency see PARA 56.

The Secretary of State may grant, on such terms, if any, as he may specify, exemptions from all or any provisions of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI

1997/1320, for classes of cases or individual cases, and may alter or cancel any exemptions so granted: reg 18 (amended by SI 2000/484).

A person authorised by the Secretary of State may inspect any ship which is not a United Kingdom ship in order to assess the ability of the master or seamen in the ship to maintain the watchkeeping standards required by the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, where there are specified grounds for believing that such standards are not being maintained (see reg 15(1)(b) (amended by SI 2000/484)); and if an authorised person finds, on inspection:

926 (1) a failure of navigational or engineering watch arrangements to conform to the requirements specified for the ship by the competent authority of the country in which the ship is registered (see the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 15(3)(c));

927 (2) an absence on a watch of a person qualified to operate equipment essential to safe navigation, safety radio communications or the prevention of marine pollution (see reg 15(3)(d)); or

928 (3) an inability of the master to provide adequately rested persons for the first watch at the commencement of a voyage and for subsequent relieving watches (see reg 15(3)(e)),

he must notify in writing the master of the ship and in the case of a ship registered outside the United Kingdom, the nearest maritime, consular or diplomatic representative of the flag State (Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 15(2)).

4 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 12. The text refers to arrangements being made in accordance with the STCW Code (Section A-VIII/2) and any operational guidance specified by the Secretary of State: see the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 12. For these purposes, 'specified by the Secretary of State' means specified in Merchant Shipping Notice 1767(M); and any reference to a particular Merchant Shipping Notice includes any amendment to that Notice which the Secretary of State considers relevant from time to time and specifies in a Merchant Shipping Notice: see the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 2(1), (2). See note 3.

5 For these purposes, 'hazardous cargo' means cargo which is or may be explosive, flammable, toxic, health-threatening or environment-polluting: Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 2(1).

6 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 13(1). Heads (1) and (2) in the text refer to watchkeeping arrangements in addition to any required under reg 12 (see the text and note 4) (see reg 13(1)); and any such watchkeeping arrangements must take full account of the principles and requirements specified by the Secretary of State (reg 13(2)). See note 3.

7 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 13(1)(a). See note 3.

8 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 13(1)(b). See note 3.

9 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17; and PARA 1132.

10 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 16; and PARA 1132.

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636. Requirement to limit exposure of workers to risks arising from noise.

Regulations impose duties on employers to protect the health and safety of workers who may be exposed to risk from noise as a result of their work¹. In particular, provision is made for:

- 643 (1) action values and limit values for daily and weekly exposure to noise²;
- 644 (2) risk assessment³;
- 645 (3) elimination or, where elimination is not reasonably practicable, reduction of exposure to noise, actions to be taken at action values and limit values, and a prohibition on exceeding limit values⁴;
- 646 (4) provision of individual hearing protection⁵;
- 647 (5) information, instruction and training⁶;
- 648 (6) health surveillance⁷;
- 649 (7) consultation with workers⁸;
- 650 (8) the grant of exemptions by the Secretary of State⁹; and
- 651 (9) offences, detention, inspection and penalties¹⁰.

1 See the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075. The regulations apply in relation to United Kingdom ships: reg 4(1). However, where a ship is being used in the course of public service activities or activities for the purpose of civil protection services, and characteristics peculiar to those activities inevitably conflict with a provision of the regulations, that provision does not apply in relation to that ship to the extent of that conflict: reg 4(2). In such a case, there is in relation to that ship a duty on the employer to ensure, so far as is reasonably practicable, the health and safety of workers who are or who are likely to be exposed to risks from noise as a result of their work: see reg 4(3).

The provisions of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962 (see PARA 623) and the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006, SI 2006/2183 (see PARA 646) continue to apply to activities to which the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, apply, except where the latter regulations contain more stringent or specific provisions (when such provisions must apply instead): see reg 4(4). However, the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, do not apply to activities to which the Control of Noise at Work Regulations 2005, SI 2005/1643 (see **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARAS 612-618) apply: see the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 4(6).

2 See the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 5.

3 See the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 6.

4 See the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 7.

5 See the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 8.

6 See the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 9.

7 See the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 10.

8 See the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 11.

9 See the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 13.

10 See the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, regs 12, 14-21.

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637. Requirement to limit exposure of workers to risks arising from mechanical vibration.

Regulations impose duties on employers to protect the health and safety of workers who may be exposed to risk from mechanical vibration as a result of their work¹. In particular, provision is made for:

- 652 (1) action values and limit values for daily exposure to hand-arm and whole body vibration²;
- 653 (2) risk assessment³;
- 654 (3) elimination or, where elimination is not reasonably practicable, reduction of exposure to mechanical vibration, actions to be taken at action values and limit values, and a prohibition on exceeding limit values⁴;
- 655 (4) provision of suitable and sufficient information, instruction and training (where required)⁵;
- 656 (5) health surveillance⁶;
- 657 (6) consultation with workers⁷;
- 658 (7) the grant of exemptions by the Secretary of State⁸; and
- 659 (8) offences, detention, inspection and penalties⁹.

1 See the Merchant Shipping and Fishing Vessels (Control of Vibration at Work) Regulations 2007, SI 2007/3077. The regulations apply in relation to United Kingdom ships: reg 4(1). However, where a ship is being used in the course of public service activities or activities for the purpose of civil protection services, and characteristics peculiar to those activities inevitably conflict with a provision of the regulations, that provision does not apply in relation to that ship to the extent of that conflict: reg 4(2). In such a case, there is in relation to that ship a duty on the employer to ensure, so far as is reasonably practicable, the health and safety of workers who are or who are likely to be exposed to risks from mechanical vibration as a result of their work: see reg 4(3).

The provisions of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962 (see PARA 623) and the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006, SI 2006/2183 (see PARA 646) continue to apply to activities to which the Merchant Shipping and Fishing Vessels (Control of Vibration at Work) Regulations 2007, SI 2007/3077, apply, except where the latter regulations contain more stringent or specific provisions (when such provisions must apply instead): see reg 4(4). However, the Merchant Shipping and Fishing Vessels (Control of Vibration at Work) Regulations 2007, SI 2007/3077, do not apply to activities to which the Control of Vibration at Work Regulations 2005, SI 2005/1093 (see **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARA 595) apply: see the Merchant Shipping and Fishing Vessels (Control of Vibration at Work) Regulations 2007, SI 2007/3077, reg 4(6).

2 See the Merchant Shipping and Fishing Vessels (Control of Vibration at Work) Regulations 2007, SI 2007/3077, reg 5.

3 See the Merchant Shipping and Fishing Vessels (Control of Vibration at Work) Regulations 2007, SI 2007/3077, reg 6.

4 See the Merchant Shipping and Fishing Vessels (Control of Vibration at Work) Regulations 2007, SI 2007/3077, reg 7.

5 See the Merchant Shipping and Fishing Vessels (Control of Vibration at Work) Regulations 2007, SI 2007/3077, reg 8.

6 See the Merchant Shipping and Fishing Vessels (Control of Vibration at Work) Regulations 2007, SI 2007/3077, reg 9.

7 See the Merchant Shipping and Fishing Vessels (Control of Vibration at Work) Regulations 2007, SI 2007/3077, reg 10.

8 See the Merchant Shipping and Fishing Vessels (Control of Vibration at Work) Regulations 2007, SI 2007/3077, reg 12.

9 See the Merchant Shipping and Fishing Vessels (Control of Vibration at Work) Regulations 2007, SI 2007/3077, regs 11, 13-20.

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638. Requirement to limit exposure of workers to risks related to exposure to carcinogens and mutagens.

Regulations impose duties on employers to protect workers from to risks related to exposure to carcinogens and mutagens¹.

¹ See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100.

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639. Requirement to provide personal protective equipment and to use it properly.

Personal protective equipment¹ must be used when risks cannot be avoided or reduced to an acceptable level by means of systems of work that are safe and without risk to health or by means of collective protection or by other means which are in use equally or more effective².

The employer must ensure³:

- 660 (1) that the personal protective equipment required to be used⁴ is provided, and such personal protective equipment must be suitable⁵;
- 661 (2) that an assessment is made to identify those circumstances where risk to the health and safety of individual workers at work cannot be avoided or reduced by other means, and to identify the characteristics required of personal protective equipment in order to provide protection to workers from that risk⁶;
- 662 (3) that personal protective equipment is provided⁷ to a worker for his individual use⁸, that appropriate instructions for the proper use and maintenance of any such personal protective equipment is readily available to any worker required to use that equipment, and is comprehensible to him⁹, and that that personal protective equipment is properly stored and maintained, and is regularly inspected and, where appropriate, checked that it is in satisfactory working order¹⁰;
- 663 (4) that workers are provided with adequate and appropriate information, training and instruction¹¹.

The employer must take all reasonably practicable steps to ensure that any personal protective equipment so provided to workers¹² is used as instructed¹³; and every worker must use any personal protective equipment so provided to him and must follow any training in the use of the personal protective equipment which has been received by him and the instructions respecting that use, which also have been provided¹⁴.

Any contravention of the requirements relating to the provision of personal protective equipment is an offence¹⁵; and, in any case where it is found in relation to a ship that there is a failure to comply with those requirements, the ship may be detained¹⁶.

1 For these purposes, 'personal protective equipment' means all clothing and equipment designed to be worn or held by the worker for protection against one or more hazards likely to endanger his health or safety at work, and any addition or accessory designed for this purpose, with the exception of ordinary working clothes and uniforms which are not specifically designed to protect the health and safety of the worker, equipment provided for the purposes of fire-fighting or lifesaving, personal protective equipment worn or used by the military, the police and other public order agencies, personal protective equipment required for road transport, sports equipment, self-defence or deterrent equipment, or portable devices for detecting and signalling risk and nuisances: Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 2(2). 'Health and safety' includes the occupational health and safety of persons whilst on board the ship and whilst boarding or leaving the ship: reg 2(2).

2 Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 5.

The Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, apply to all activities of workers on United Kingdom ships except when the activity of a worker is on a public

service vessel or a vessel engaged in search and rescue, and when the characteristics of that activity inevitably conflict with a provision of the regulations; and in such a case there is a duty on the employer so far as is reasonably practicable to ensure the health and safety of the worker when performing that activity: reg 3(1). The Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, do not apply to or in relation to the activities of a worker which are covered by the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966 (as to which see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 523 et seq): Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 3(3). The provisions of reg 3(1), (3) apply to ships other than United Kingdom ships which are in United Kingdom waters: see reg 3(2). For these purposes, 'United Kingdom ship' means a ship which is a United Kingdom ship within the meaning of the Merchant Shipping Act 1995 s 85(2) (see PARA 591 note 4), is a government ship within the meaning of s 308(4) (see PARA 20 note 3), or is a hovercraft registered under the Hovercraft Act 1968 (see PARA 390 et seq): Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 2(2). 'Public service vessel' means any vessel operated by and on behalf of a public body while it is carrying out the authorised functions of that body: reg 2(2).

3 Where a person on whom a duty is imposed by any provision of the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, does not have control of the matter to which the regulation relates because he does not have responsibility for the operation of the ship, then any duty imposed by that regulation also extends to any person who has control of that matter: reg 4.

4 Ie under the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 5 (see the text and notes 1-2): see reg 6(1).

5 Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 6(1). As to the meaning of 'suitable' for these purposes see reg 6(2). Personal protective equipment must be provided free of charge to the worker except that where use of the equipment is not exclusive to the work place, workers may be required to contribute towards the cost of personal protective equipment: reg 6(3).

6 Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 7(1). In accordance with the findings of such assessment as is mentioned in head (2) in the text, personal protective equipment which complies with the characteristics identified therein and which meets the standards specified as suitable under reg 6(2) (see note 5) must be provided: see reg 7(1). The assessment mentioned in head (2) in the text must be made before personal protective equipment is provided under the regulations (see reg 7(1)); and must be reviewed to take account of any changes to the factors on which it was based (reg 7(2)).

7 Ie under the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 6(1) (see head (1) in the text): see reg 8(1).

8 Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 8(1). Equipment may be provided for the use of more than one person if it is adjustable to fit all sizes, easily accessible and kept in clearly marked places, and maintained in a hygienic condition and repaired, decontaminated and replaced as necessary, so that it will not create any health or hygiene problems: reg 8(2).

9 Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 8(3).

10 See the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 8(4).

11 Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 9(1). The information, training and instruction provided in accordance with head (4) in the text may include the organisation of demonstrations in the wearing of personal protective equipment, in respect of the risks against which the personal protective equipment is designed to provide protection, the circumstances in which it is to be used, and the correct use, maintenance and storage of the equipment: see reg 9(1). The information, training and instruction so provided is not adequate and appropriate unless it is comprehensible to the persons to whom it is provided: reg 9(2).

12 Ie under the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 6(1) (see head (1) in the text): see reg 10(1).

13 Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 10(1).

14 Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 10(2). The text refers to the training in the use of the personal protective equipment and the instructions respecting that use provided under reg 9 (see head (4) in the text): see reg 10(2).

15 See the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, regs 11-13; and PARA 1134.

16 See the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, regs 14-17; and PARA 1134. The provisions of regs 15-17 apply to ships other than United Kingdom ships which are in United Kingdom waters: see reg 3(2).

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D. FIRE PRECAUTIONS

640. Outbreaks of fire.

Safety regulations¹ may make provision with respect to the steps to be taken to prevent, detect and deal with outbreaks of fire on a ship².

Separate provision has been made by such regulations in relation to small ships³ and large ships⁴, and to certain other ships constructed on or after 1 July 2002⁵.

1 As to the meaning of 'safety regulations' see PARA 591.

2 See the Merchant Shipping Act 1995 s 85(3)(j); and PARA 591.

3 See the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998, SI 1998/1011 (amended by SI 1999/992; SI 1999/1957; SI 2000/2687; SI 2003/1951; SI 2004/302; SI 2005/2114). The Merchant Shipping (Fire Protection: Small Ships) Regulations 1998, SI 1998/1011 (as so amended) apply to United Kingdom ships of Class II(A) of less than 21.34 metres in length, Classes III, IV, V, VI and VI(A) and Classes VII, VII(A), VIII, VIII(A), VIII(T), VIII(A)(T), IX, IX(A)(T), IX(A), XI and XII of under 500 tons wherever they may be and to other non-United Kingdom ships of such Classes, size and tonnage while they are within the United Kingdom or the territorial waters thereof: see reg 1(7) (amended by SI 1999/992; SI 2000/2687; SI 2003/1951; SI 2004/302). As to the territorial sea generally see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 123.

The Merchant Shipping (Fire Protection: Small Ships) Regulations 1998, SI 1998/1011, reg 1(7) (as so amended) is subject to the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 5 (see PARA 602 note 4) (which revokes the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998, SI 1998/1011, in relation to passenger ships of Classes III, VI and VI(A) which are 24 metres or over in length and are existing ships, engaged on domestic voyages, for the purposes of those regulations): see the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998, SI 1998/1011, reg 1(7) (as so amended).

Nor do the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998, SI 1998/1011, apply to a commercial vessel which has been examined, and in respect of which a certificate has been issued, in accordance with the applicable Code of Practice, or to a vessel which is operating under the phase-in arrangements of the Code of Practice, as provided for under the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771: see PARAS 610, 611. See also note 5.

4 See the Merchant Shipping (Fire Protection: Large Ships) Regulations 1998, SI 1998/1012 (amended by SI 1999/992; SI 1999/1957; SI 2000/2687; SI 2001/1638; SI 2003/2950; SI 2003/2951; SI 2004/302; SI 2005/2114). The Merchant Shipping (Fire Protection: Large Ships) Regulations 1998, SI 1998/1012 (as so amended) apply to United Kingdom ships of Classes I, II, Class II(A) of 21.34 metres in length or over, and Classes VII, VII(A), VII(T), VIII, VIII(A), VIII(T), VIII(A)(T), IX, IX(A), IX(A)(T), XI and XII of 500 tons or over, wherever they may be, to other such ships while they are within United Kingdom waters, when engaged on international voyages, to other such ships when not engaged on international voyages, while they are within United Kingdom national waters and, where any requirement of the regulations relates to ships constructed on or after a certain date, then, to the extent the Secretary of State deems reasonable and practicable, the requirement will also apply in respect of any major repairs, alterations and modifications commenced on or after the date to ships constructed before that date: see reg 1(7) (amended by SI 2000/2687; SI 2003/1950; SI 2003/1951; SI 2004/302).

The Merchant Shipping (Fire Protection: Large Ships) Regulations 1998, SI 1998/1012, reg 1(7) (as so amended) is subject to the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 5 (see PARA 602 note 4) (which revokes the Merchant Shipping (Fire Protection: Large Ships) Regulations 1998, SI 1998/1012, in relation to passenger ships of Class II(A) which are 24 metres or over in length and are existing ships, engaged on domestic voyages, for the purposes of those regulations): see the Merchant Shipping (Fire Protection: Large Ships) Regulations 1998, SI 1998/1012, reg 1(7) (as so amended).

Nor do the Merchant Shipping (Fire Protection: Large Ships) Regulations 1998, SI 1998/1012, apply to a large commercial vessel which has been examined, and in respect of which appropriate certificates have been issued,

in accordance with the Code of Practice, as provided for under the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771: see PARA 610.

5 See the Merchant Shipping (Fire Protection) Regulations 2003, SI 2003/2950 (amended by SI 2005/2114). The Merchant Shipping (Fire Protection) Regulations 2003, SI 2003/2950, apply to United Kingdom ships constructed on or after 1 July 2002, wherever they may be, and, while they are within United Kingdom waters, to non-United Kingdom ships constructed on or after 1 July 2002: reg 3(1). The regulations do not apply to vessels to which the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998, SI 1998/1011 (see note 3) apply, vessels to which the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687 (see PARA 602) apply, vessels which have been examined, and in respect of which appropriate certificates have been issued, in accordance with the Code of Practice for Safety of Large Commercial Sailing and Motor Vessels referred to in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 4 (see PARA 610), fishing vessels, high speed craft to which the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARA 614 et seq) apply, non-United Kingdom ships which are warships, troopships, or other ships used only on government non-commercial service by the government of a state which has consented to be bound by the SOLAS Convention and ships not propelled by mechanical means, or sailing ships which proceed to sea and pleasure vessels (other than passenger ships) of 13.7 metres in length or over: see the Merchant Shipping (Fire Protection) Regulations 2003, SI 2003/2950, reg 3(2). 'SOLAS Convention' means the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874), with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277) (see PARA 8): see the Merchant Shipping (Fire Protection) Regulations 2003, SI 2003/2950, reg 2(1).

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E. NAVIGATION

641. General safety of navigation requirements.

Regulations have been made¹ giving effect to the provisions of Chapter V of the International Convention for the Safety of Life at Sea 1974 (the 'SOLAS Convention')², which identifies certain navigation safety services which should be provided by contracting governments and sets forth provisions of an operational nature applicable in general to ships and other vessels on all voyages.

Accordingly, the application of various provisions contained in Chapter V of the SOLAS Convention is made compulsory (in relation to ships of qualifying descriptions)³. Provision is made for offences and penalties to apply where various requirements are contravened⁴, and for the detention of a ship in any such case of non-compliance⁵.

1 See the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473 (amended by SI 2002/2626; SI 2004/302; SI 2004/2110; SI 2005/2114). The Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473, apply to all United Kingdom ships wherever they may be and to all other ships while they are within United Kingdom waters: reg 4(1). However, the regulations do not apply to warships or naval auxiliaries, to ships, other than United Kingdom ships, which are owned or operated by an EEA state and used only on government non-commercial service, or to ships navigating solely the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of the St Lambert Lock at Montreal in the Province of Quebec, Canada: reg 4(2) (amended by SI 2004/2110). Nor do the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473, apply to ships, other than United Kingdom ships, which are owned or operated by a contracting government and used only on government non-commercial service: reg 4(2A) (added by SI 2004/2110). Various individual regulations are disapplied in relation to various specific categories of ship: see the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473, reg 4(2B)-(10) (reg 4(2B), (5A), (6A) added, reg 4(5) amended, by SI 2004/2110; the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473, reg 4(4) amended by SI 2004/302).

The Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473, do not apply in relation to passenger ships of Class A, B, C or D of 24 metres or over in length engaged on domestic voyages: see the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 5; and PARA 602 note 4.

2 See the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874), with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277) (see PARA 8).

3 See the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473, reg 5. Supplementary provision is made by reg 6, Sch 3. The Secretary of State may grant exemptions from various provisions of the SOLAS Convention Ch V (see the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473, regs 7, 8); and he may grant approvals, as respects a United Kingdom ship, where a regulation in the SOLAS Convention Ch V refers to any thing requiring the approval of the Administration, to be done to the satisfaction of the Administration, or to be acceptable to the Administration (see the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473, reg 9).

4 See the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473, reg 10, Sch 4; and PARA 1181.

5 See the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473, reg 11; and PARA 1181.

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642. Procedure allowing radio stations to receive signals indicating dangers to navigation.

Safety regulations¹ may make provision with respect to the steps to be taken, in a case where danger of any kind occurs or is suspected on a ship, for removing or reducing the danger and for warning persons who are not on the ship of the danger or suspected danger².

Accordingly, every person in charge of a controlled station for wireless telegraphy³ must, on receiving the signal prescribed under safety regulations relating to dangers to navigation⁴, which indicates that a message is about to be sent under those regulations, refrain from sending messages for a time sufficient to allow other stations to receive the message, and, if so required by the Secretary of State, must transmit the message in such manner as may be required by the Secretary of State⁵. Compliance with this requirement⁶ is deemed to be a condition of every wireless telegraphy licence⁷.

1 As to the meaning of 'safety regulations' see PARA 591.

2 See the Merchant Shipping Act 1995 s 85(3)(j); and PARA 591.

3 For these purposes, 'controlled station for wireless telegraphy' means such a station controlled by the Secretary of State or by the Office of Communications; 'controlled' includes controlled by means of a licence granted by the Office of Communications; and 'station for wireless telegraphy' has the same meaning as 'wireless telegraphy station' in the Wireless Telegraphy Act 2006 (as to which see **TELECOMMUNICATIONS AND BROADCASTING**): Merchant Shipping Act 1995 s 91(7) (amended by the Communications Act 2003 s 406(1), Sch 17 para 132; and the Wireless Telegraphy Act 2006 s 123, Sch 7 para 15). As to the Secretary of State see PARA 38. As to the Office of Communications ('OFCOM') see **TELECOMMUNICATIONS AND BROADCASTING** vol 97 (2010) PARA 2 et seq; and as to licences granted by OFCOM see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 447 et seq.

4 As to the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473, see PARA 641.

5 Merchant Shipping Act 1995 s 91(5) (amended by SI 2002/1473).

6 I.e compliance with the Merchant Shipping Act 1995 s 91(5) (see the text and notes 3-5): see s 91(6).

7 Merchant Shipping Act 1995 s 91(6). For these purposes, 'wireless telegraphy licence' has the same meaning as in the Wireless Telegraphy Act 2006 (see **TELECOMMUNICATIONS AND BROADCASTING**): Merchant Shipping Act 1995 s 91(7) (definition added by the Wireless Telegraphy Act 2006 Sch 7 para 15).

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643. Radio installations.

The requirements relating to radio installations¹ to be complied with by ships² cover:

- 664 (1) GMDSS ships³; and
- 665 (2) non-GMDSS ships⁴, including: (a) VHF radiotelephony⁵; (b) radiotelephony⁶; (c) radiotelegraphy⁷; and (d) radio equipment for lifeboats and survival craft⁸.

There are also powers of enforcement⁹.

Separate provision is made in relation to fishing vessels¹⁰.

1 The Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070. For these purposes, 'radio installation' means any radio installation provided on board a ship in compliance with the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, including its associated antennas, interconnecting circuits and, where appropriate, sources of electrical energy: reg 2. The regulations apply to sea-going United Kingdom ships wherever they may be (except while they are within the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of the St Lambert Lock at Montreal in the Province of Quebec, Canada) and to other seagoing ships while they are within United Kingdom waters: reg 3(1) (amended by SI 2000/2687). The Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, do not apply to troopships not registered in the United Kingdom, ships not propelled by mechanical means, pleasure vessels, fishing vessels, cargo ships of less than 300 tons, craft to which the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARA 614 et seq) apply and ships which are passenger ships of Class A, B, C or D as defined in the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687 (see PARA 602 note 4), which are new ships, engaged on domestic voyages, for the purposes of those regulations: Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, reg 3(2) (amended by SI 2000/2687; SI 2004/302). Accordingly, the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, have been revoked in relation to passenger ships of Class A, B, C or D of 24 metres or over in length engaged on domestic voyages (see the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 5; and PARA 602 note 4); and they do not apply to a commercial vessel which has been examined, and in respect of which a certificate has been issued, in accordance with the applicable Code of Practice, or to a vessel which is operating under the phase-in arrangements of the Code of Practice, as provided for under the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771 (see PARAS 610, 611).

2 As to the Secretary of State's power to permit the provision of equivalent equipment and exemptions see reg 5; and as to the performance standards to be met by equipment that is required to be provided under the regulations see reg 6 (amended by SI 1999/1957). Nothing in the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, prohibits any ship, survival craft or person in distress from using any means at their disposal to attract attention, make known their position or obtain help: reg 4.

3 See the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, Pt II (regs 7-20) which makes provision in relation to: functional requirements (reg 8); installation, location and control of radio equipment (reg 9); installation of a distress panel (reg 10); radio equipment to be provided for all sea areas (reg 11, Sch 1 (satellite EPIRBs)); additional radio equipment to be provided for area A1 ships (reg 12); additional radio equipment to be provided for area A2 ships (reg 13); additional radio equipment to be provided for area A3 ships (reg 14); additional radio equipment to be provided for area A4 ships (reg 15), radio watches (reg 16); sources of energy (reg 17); serviceability and maintenance requirements (reg 18, Sch 2 (equipment tests and reserve power checks)); radio personnel (reg 19); radio records (reg 20, Sch 3 (radio log)); and interpretation (reg 7). For these purposes, 'sea area A1' and 'sea area A2' mean an area specified as such in the Admiralty List of Radio Signals, being the document so entitled published by the Hydrographer of the Navy and any subsequent List containing the like information which the Hydrographer of the Navy considers relevant from time to time which replaces the Admiralty List of Radio Signals or replaces any subsequent List containing the like information (and a reference to any such List includes a reference to any Admiralty Notice to Mariners amending the same which the Hydrographer of the Navy considers relevant from time to time); 'sea area A3'

means an area (excluding sea areas A1 and A2) within the coverage of an INMARSAT geostationary satellite in which continuous alerting is available; and 'sea area A4' means any area of the sea which is not sea area A1, A2 or A3; see reg 2. 'INMARSAT' means the Organisation established by the Convention on the International Maritime Satellite Organisation (with Operating Agreement) (London, 3 September 1976; TS 94 (1979); Cmnd 7722); see the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, reg 2. As to the INMARSAT Convention see PARA 8; and **TELECOMMUNICATIONS** vol 97 (2010) PARA 63. 'GMDSS ship' means a ship to which the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, Pt II applies; and 'GMDSS' means the Global Maritime Distress and Safety System; reg 2. GMDSS is the International Maritime Organisation's world-wide network of automated emergency communications for vessels at sea. As to the International Maritime Organisation see PARA 13.

4 See the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, Pt III (regs 21-27) which makes provision in relation to: provision of radio installations (reg 22); interference with reception and with other installations (reg 23); testing of equipment (reg 24, Sch 4 (equipment tests and battery and reserve power checks)); charging of batteries (reg 25); spare parts, tools and testing equipment (reg 26); serviceability and maintenance of radio installation (reg 27); and interpretation (reg 21 (amended by SI 2001/1638)).

5 See the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, Pt III (regs 28-32) which makes provision in relation to: VHF radiotelephone stations (reg 28); provision of antennas (reg 29); supply of electrical energy (reg 30); radiotelephone operators using the VHF radiotelephone installation (reg 31); and VHF radio watch (reg 32).

6 See the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, Pt III (regs 33-39) which makes provision in relation to: radiotelephone stations (reg 33); provision of antennas (reg 34); the range of radiotelephone transmitters (reg 35); supply of electrical energy (reg 36); radiotelephone operators (reg 37, Sch 5 (additional knowledge and training requirements for radiotelephone operators and radio operators)); radio watch (reg 38); and the radio log in respect of radiotelephone ships (reg 39, Sch 6 (radio log in respect of radiotelephone ships) (reg 39 amended by SI 2001/1638)).

7 See the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, Pt III (regs 40-47) which makes provision in relation to: radiotelegraph stations (reg 40); radiotelegraph operating rooms (reg 41); provision of antennas (reg 42); range of radiotelegraph transmitters (reg 43); supply of electrical energy (reg 44); radio officers (reg 45, Sch 5 (additional knowledge and training requirements for radiotelephone operators and radio operators) (reg 45 amended by SI 2001/1638)); radio watch (Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, reg 46); and radio log in respect of radiotelegraph ships (reg 47, Sch 7 (radio log in respect of radiotelegraph ships) (reg 47 amended by SI 2001/1638)).

8 See the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, Pt III (reg 48).

9 See the Merchant Shipping (Radio Installations) Regulations 1998, SI 1998/2070, Pt IV (regs 49-51) which makes provision in relation to: the power to detain (reg 49); penalties (reg 50); and defences (reg 51).

10 See the Merchant Shipping (Radio) (Fishing Vessels) Regulations 1999, SI 1999/3210 (amended by SI 2002/2201); and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1022.

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644. Weighing of goods vehicles etc before loading on to classes of ro/ro passenger ship.

Unless their weight has been previously determined, certain goods vehicles and trailers must not be loaded on to specified classes of ro/ro passenger ship, if the ship is a United Kingdom ship¹. This requirement applies also to ro/ro passenger ships which are operating as ships of those classes but which are not United Kingdom ships, while they are in a port in the United Kingdom².

1 See the Merchant Shipping (Weighing of Goods Vehicles and other Cargo) Regulations 1988, SI 1988/1275 (amended by SI 1989/270). The Merchant Shipping (Weighing of Goods Vehicles and other Cargo) Regulations 1988, SI 1988/1275, apply to any ro/ro passenger ship which is operating as a ship of Class II or II(A) within the meaning of the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514 (see PARA 599 note 4) and is a United Kingdom ship: Merchant Shipping (Weighing of Goods Vehicles and other Cargo) Regulations 1988, SI 1988/1275, reg 1(4); Interpretation Act 1978 s 17(2)(b). For these purposes, 'ro/ro passenger ship' means a passenger ship provided with cargo or vehicle spaces in which cargo or vehicles can be loaded and unloaded in a horizontal direction: Merchant Shipping (Weighing of Goods Vehicles and other Cargo) Regulations 1988, SI 1988/1275, reg 1(2).

2 See the Merchant Shipping (Weighing of Goods Vehicles and other Cargo) (Application to non-UK Ships) Regulations 1989, SI 1989/568, reg 2. As to the meaning of 'United Kingdom' see PARA 17 note 3.

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645. Closing of openings in hulls etc.

Before ships proceed on any voyage, they must comply with the relevant provisions relating to the closure of openings in hulls and watertight bulkheads below the bulkhead deck¹ and in enclosed superstructures and bulkheads above the bulkhead deck².

1 See the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514, Pt III (regs 20-26); and the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998, SI 1998/2515, Pt III (regs 15-20).

Both the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514, and the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998, SI 1998/2515, have been revoked in relation to passenger ships of Class A, B, C or D of 24 metres or over in length engaged on domestic voyages: see the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 5; and PARA 602 note 4.

2 See the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514, Pt IV (regs 27-36) (amended by SI 2001/1638); and the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998, SI 1998/2515, Pt IV (regs 21-29). See note 1.

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F. EQUIPMENT; LIFE-SAVING APPLIANCES; COMMUNICATIONS

646. Safety requirements relating to ship's machinery and equipment.

Safety regulations¹ may make provision with respect to the machinery and equipment of a ship and the use of such machinery and equipment².

The regulations so made impose health and safety requirements with respect to: (1) the provision and use of work equipment on merchant ships and fishing vessels³; (2) lifting operations and the provision and use of lifting equipment on merchant ships and fishing vessels⁴; and (3) ensuring the safety of navigation (pursuant to which certain requirements are set down in relation to the equipment used in navigation)⁵.

Separate provision is made to implement the EC Council Directive on Marine Equipment⁶.

1 As to the meaning of 'safety regulations' see PARA 591.

2 See the Merchant Shipping Act 1995 s 85(3)(a), (d); and PARA 591.

3 See the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006, SI 2006/2183, which make provision in relation to: the circumstances in which the regulations apply (reg 4); the duties extended by the regulations to any person having control of a matter, eg by reason of having responsibility for operation of the ship (reg 5); requirements as to the suitability of work equipment (reg 6 (amended by SI 2008/2165)); the requirement for work equipment to be maintained in an efficient state and in good repair (Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006, SI 2006/2183, reg 7); the inspection of work equipment where its safety depends on the installation conditions (reg 8); the use of work equipment which involves a specific risk to health or safety (reg 9); information and instructions and training in the use of work equipment (regs 10, 11); the requirement for work equipment to be designed and constructed in accordance with specified requirements (reg 12); the requirement for dangerous parts of ship's work equipment to have guards or protection devices (reg 13), and for protection against electrical hazards (reg 14); the requirement for workers to be protected against specified hazards (reg 15) and from injury as a consequence of high or very low temperatures (reg 16); controls in relation to mobile work equipment (regs 17-21); the isolation of work equipment from sources of energy (reg 22); the stability of work equipment (reg 23); lighting (reg 24); maintenance operations (reg 25); markings (reg 26); warnings (reg 27); mobile work equipment (regs 28-33); the requirement for workers to comply with any instruction or training provided under the regulations (reg 34); and penalties, offences, inspections and detentions as well as compensation (regs 35-41).

4 See the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006, SI 2006/2184, which make provision in relation to: the circumstances in which the regulations apply (reg 4); the duties extended by the regulations to any person having control of a matter, eg by reason of having responsibility for operation of the ship (reg 5); requirements as to the strength of and stability of lifting equipment (reg 6); requirements as to lifting equipment for lifting persons (reg 7); the positioning and installation of permanently installed lifting equipment (reg 8); the requirement for lifting equipment to be marked with its safe working loads (reg 9); the requirement for lifting operations to be properly planned and supervised and for the employer to provide a safe system of work in specified circumstances (reg 10); the testing, examination and inspection of lifting equipment, and certificates and reports in relation to such matters (regs 11-15) (reg 11 amended by SI 2008/2166); requirements as to hatch covers used on a ship, which requires account to be taken of the principles and guidance in the Code of Safe Working Practices for Merchant Seamen (Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006, SI 2006/2184, reg 16); the requirement for workers to comply with any reasonable instructions under reg 7, 10 or 16, as well as with any system of work provided by their employer in accordance with reg 10 (reg 17); and penalties, offences, inspections and detentions as well as compensation (regs 18-24).

5 In relation to navigation safety equipment see the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473; and PARA 641.

6 I.e. EC Council Directive 96/98 of 20 December 1996 (OJ L46, 17.02.1997, p 25) on marine equipment (amended by EC Commission Directive 98/85 of 11 November 1998 (OJ L315, 25.11.1998, p 14); EC Commission Directive 2001/53 of 10 July 2001 (OJ L204, 28.07.2001, p 1); EC Commission Directive 2002/75 of 2 September 2002 (OJ L254, 23.09.2002, p 1); EC Directive 2002/84 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 53)). As to the implementation referred to in the text see the Merchant Shipping (Marine Equipment) Regulations 1999, SI 1999/1957 (amended by SI 2001/1638; SI 2004/302; SI 2004/1266).

UPDATE

646 Safety requirements relating to ship's machinery and equipment

NOTE 3--SI 2006/2183 amended: SI 2008/1597.

NOTE 6--Directive 96/98 further amended: EC Commission Directive 2008/67 (OJ L171, 1.7.2008, p 16); EC Commission Directive 2009/26 (OJ L113, 6.5.2009, p 1). SI 1999/1957 further amended: SI 2009/2021.

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647. Life-saving routines, appliances and communications.

Safety regulations¹ may make provision with respect to the steps to be taken, in a case where a ship is in distress or stranded or wrecked, for the purpose of saving the ship and its machinery, equipment and cargo and the lives of persons on or from the ship, including the steps to be taken by other persons for giving assistance in such a case².

The regulations so made, or having effect as if so made, relate to:

- 666 (1) emergency information for passengers³;
- 667 (2) minimum levels of training for seafarers, requiring the means for safe communication among the crew, between the crew and shore-based authorities, and between the crew and passengers on passenger ships and hovercraft in emergency situations⁴;
- 668 (3) life-saving appliances for different classes of ships⁵; and
- 669 (4) musters and training⁶.

1 As to the meaning of 'safety regulations' see PARA 591.

2 See the Merchant Shipping Act 1995 s 85(3)(l); and PARA 591.

3 See the Merchant Shipping (Emergency Information for Passengers) Regulations 1990, SI 1990/660.

4 See the Merchant Shipping (Minimum Standards of Safety Communications) Regulations 1997, SI 1997/529 (amended by SI 1999/1704; SI 2004/1266; SI 2006/89).

5 See the Merchant Shipping (Life-Saving Appliances For Ships Other Than Ships Of Classes III To VI(A)) Regulations 1999, SI 1999/2721 (amended by SI 2000/2558; SI 2000/2687; SI 2001/2642; SI 2002/1473; SI 2004/2259; SI 2005/2114); and the Merchant Shipping (Life-Saving Appliances For Passenger Ships Of Classes III To VI(A)) Regulations 1999, SI 1999/2723 (amended by SI 2000/2687; SI 2001/2642).

Both the Merchant Shipping (Life-Saving Appliances For Ships Other Than Ships Of Classes III To VI(A)) Regulations 1999, SI 1999/2721, and the Merchant Shipping (Life-Saving Appliances For Passenger Ships Of Classes III To VI(A)) Regulations 1999, SI 1999/2723, are revoked in relation to passenger ships of Class A, B, C or D of 24 metres or over in length engaged on domestic voyages: see the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, SI 2000/2687, reg 5; and PARA 602 note 4. The Merchant Shipping (Life-Saving Appliances For Ships Other Than Ships Of Classes III To VI(A)) Regulations 1999, SI 1999/2721 (as so amended) do not apply to a commercial vessel which has been examined, and in respect of which a certificate has been issued, in accordance with the applicable Code of Practice, or to a vessel which is operating under the phase-in arrangements of the Code of Practice, as provided for under the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771: see PARAS 610, 611.

6 See the Merchant Shipping (Musters, Training and Decision Support Systems) Regulations 1999, SI 1999/2722 (amended by SI 2004/302; SI 2005/2114).

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G. ACCESS AND EGRESS

648. In general.

Safety regulations¹ may make provision with respect to the access to, presence in and egress from different parts of a ship of persons of any description².

The regulations so made or having effect as if so made relate to:

- 670 (1) means of access³;
- 671 (2) entry into dangerous spaces⁴; and
- 672 (3) safe movement on board ship⁵.

These provisions are supplemented by health and safety requirements which relate to signage⁶.

1 As to the meaning of 'safety regulations' see PARA 591.

2 See the Merchant Shipping Act 1995 s 85(3)(g); and PARA 591.

3 See the Merchant Shipping (Means of Access) Regulations 1988, SI 1988/1637, which make provision in relation to: the application of the regulations (reg 3 (amended by SI 1988/2274; SI 1993/1072)); general duties concerning access arrangements (Merchant Shipping (Means of Access) Regulations 1988, SI 1988/1637, reg 4); gangways (reg 5); accommodation ladders (reg 6); portable and rope ladders (reg 7); life-buoys (reg 8); safety nets (reg 9); use of equipment (reg 10); penalties (regs 11, 12); inspection and detention of a United Kingdom ship (reg 13); inspection, detention and other measures in respect of ships registered outside the United Kingdom (reg 14); and compensation and enforcement of detention (reg 15).

The Merchant Shipping (Means of Access) Regulations 1988, SI 1988/1637 (as so amended) do not apply to a commercial vessel which has been examined, and in respect of which a certificate has been issued, in accordance with the applicable Code of Practice, or to a vessel which is operating under the phase-in arrangements of the Code of Practice, as provided for under the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771: see PARA 610.

4 See the Merchant Shipping (Entry into Dangerous Spaces) Regulations 1988, SI 1988/1638, which make provision in relation to: the application of the regulations (reg 3 (amended by SI 1988/2274; SI 1993/1072)); entrances to dangerous spaces (Merchant Shipping (Entry into Dangerous Spaces) Regulations 1988, SI 1988/1638, reg 4); entry into dangerous spaces (reg 5); drills (reg 6); testing equipment (reg 7); penalties (regs 8, 9); inspection and detention of a United Kingdom ship (reg 10); inspection, detention and other measures in respect of ships registered outside the United Kingdom (reg 11); and compensation and enforcement of detention (reg 12).

5 See the Merchant Shipping (Safe Movement on Board Ship) Regulations 1988, SI 1988/1641, which make provision in relation to: the application of the regulations (reg 3 (amended by SI 1988/2274; SI 1993/1072)); general provisions (Merchant Shipping (Safe Movement on Board Ship) Regulations 1988, SI 1988/1641, reg 4); transit areas (reg 5); lighting (reg 6); guard rails (reg 8); ladders (reg 9); access ladders to ship's holds (reg 11); penalties (regs 12, 13); inspection and detention of a United Kingdom ship (reg 14); inspection, detention and other measures in respect of ships registered outside the United Kingdom (reg 15); compensation and enforcement of detention (reg 16).

6 See the Merchant Shipping and Fishing Vessels (Safety Signs and Signals) Regulations 2001, SI 2001/3444; and PARA 623.

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H. PREVENTION OF COLLISIONS

649. Distress signals used to prevent collisions.

United Kingdom vessels, including hovercraft, wherever they may be, and other vessels in United Kingdom waters must comply with the International Regulations for Preventing Collisions at Sea 1972¹ and the prescribed signals of distress for use by vessels as such signals².

1 le the International Regulations for Preventing Collisions at Sea (London, 20 October 1972; TS 77 (1977); Cmnd 6962) (as to which see PARA 8).

2 See the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75; and PARA 715 et seq.

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I. COUNTING AND REGISTERING PASSENGERS

(A) PROCEDURE FOR COUNTING AND REGISTERING PASSENGERS

650. System for counting passengers on board.

The owner of any passenger ship¹ must ensure that, in respect of any United Kingdom passenger ship when it leaves any landing point² and in respect of any other passenger ship when it leaves any landing point in the United Kingdom, there is a system capable of counting all persons³ on board which⁴:

- 673 (1) in the case of a passenger ship of Class II or II(A)⁵, in respect of passengers, uses a system of individual passenger boarding cards⁶;
- 674 (2) conforms to the prescribed requirements⁷ and the appropriate Merchant Shipping Notice⁸; and
- 675 (3) is approved by the Secretary of State⁹.

The system of counting so established¹⁰ must be such that:

- 676 (a) all persons boarding such a ship at a landing point at the beginning of a voyage¹¹ are counted individually on, or just prior to, boarding¹² and, as the case may be: (i) all persons disembarking at subsequent landing points, during the course of a voyage, are counted individually as they disembark¹³; (ii) all persons boarding at subsequent landing points, during the course of a voyage, are counted individually on, or just prior to, boarding¹⁴; and (iii) the number of persons remaining on board at each landing point is determined¹⁵; or
- 677 (b) the number of persons is determined and recorded according to an alternative method approved by the Secretary of State, which must be of equivalent effectiveness to the system set out in head (a) above¹⁶;

If the counting system so established in respect of a passenger ship¹⁷ includes a system of individual passenger boarding cards no passenger is to be permitted to board the ship unless he has been issued with an individual boarding card¹⁸.

Immediately before a passenger ship leaves any landing point the total number of persons on board at that time as determined by means of the counting system must be communicated to the master of the ship and the passenger registrar¹⁹.

If, in respect of any person on board a ship, any person has declared a need for special care or assistance in emergency situations, the owner must ensure that such information is properly recorded and communicated to the master of the ship²⁰.

No passenger ship is to leave any landing point if:

- 678 (A) the total number of persons on board has not been communicated to the master of the ship and the passenger registrar²¹ or the owner has not properly

- recorded and communicated to the master of the ship any person's declared need for special care or assistance in emergency situations²²; or
- 679 (B) the total number of persons on board the ship exceeds the number of persons the ship is permitted to carry²³.

The arrangements made in pursuance of the requirements for counting all persons on board²⁴ must be described in written instructions which are to be kept on board the ship at all times in the custody of the master²⁵.

Additional requirements apply to voyages of more than 20 miles²⁶; and, in respect of any passenger ship which is not a Community ship²⁷ on any voyage from any landing point outside the territory of the European Community to the United Kingdom the owner must make specified information²⁸ readily available to the appropriate search and rescue services²⁹ for the purposes of search and rescue in the event of an emergency or in the aftermath of an accident involving the ship³⁰.

1 For these purposes, 'passenger ship' means any ship carrying more than 12 passengers; and 'ship' includes hovercraft: Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 3(1). Where a ship is managed or operated by a person other than the owner (whether on behalf of the owner or some other person, or on his own behalf), a reference to the owner is to be construed as including a reference to that other person: reg 3(2).

The Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, apply to any United Kingdom passenger ship wherever it may be and any other passenger ship while it is within United Kingdom waters: reg 4(1). However, the regulations do not apply to any ship of war, any troop ship, or any pleasure yacht (unless it is or will be crewed and carry more than 12 passengers for commercial purposes): reg 4(2). For these purposes, 'United Kingdom passenger ship' means a passenger ship which is a United Kingdom ship: reg 3(1). As to the meaning of 'United Kingdom' see PARA 17 note 3.

The regulations implement EC Council Directive 98/41 of 18 June 1998 (OJ L188, 02.07.1998, p 35) on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community (amended by EC Directive 2002/84 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 53)) and the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874), with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277) (as to which see PARA 8) Ch III.

2 For these purposes, 'landing point' means any berth, excursion point, floating pier or stage, link span, pier, port, stop or anchorage point from or to where passengers are embarked or disembarked: Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 3(1).

3 For these purposes, 'person' means any person on board a ship irrespective of their age: Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 3(1).

4 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(1). As to exemptions see PARA 652; and as to offences see PARA 1182.

5 Ie within the meaning of the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998, SI 1998/2514 (see PARA 599 note 4): see the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(1)(a).

6 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(1)(a).

7 Ie the requirements of the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(2)-(5) (see the text and notes 10-20): see reg 5(1)(b).

8 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(1)(b). For these purposes, 'Merchant Shipping Notice' means a Notice described as such, issued by the Maritime and Coastguard Agency; and a reference to any particular Merchant Shipping Notice includes a reference to any document amending or replacing that Notice: reg 3(1). Accordingly, the text refers to Merchant Shipping Notice 1794(M+F): see the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(1)(b). As to the Maritime and Coastguard Agency see PARA 56.

9 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(1)(c). As to the Secretary of State see PARA 38.

10 Is established by the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(1) (see the text and notes 1-9): see reg 5(2).

11 For these purposes, 'voyage' includes an excursion: Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 3(1).

12 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(2)(a).

13 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(2)(a)(i).

14 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(2)(a)(ii).

15 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(2)(a)(iii).

16 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(2)(b).

17 Is established by the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(1) (see the text and notes 1-9): see reg 5(3).

18 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(3).

19 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(4). For these purposes, 'passenger registrar' means the person appointed by the owner of a ship pursuant to reg 8(1)(b) (see PARA 651): reg 3(1). As to exemptions in respect of reg 5(4) particularly see PARA 652.

20 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(5).

21 Is if the requirements of the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(4) (see the text and note 19) have not been complied with: see reg 5(6)(a).

22 Is if the requirements of the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(5) (see the text and note 20) have not been complied with: see reg 5(6)(a).

23 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(6)(b).

24 Is the requirements in the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(1) (see the text and notes 1-9): see reg 5(7).

25 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(7).

26 In respect of any United Kingdom passenger ship leaving any landing point either inside the territory of the European Community on a voyage of more than 20 miles from that landing point, or outside the territory of the European Community on an international voyage, and in respect of any other passenger ship leaving any landing point in the United Kingdom on a voyage of more than 20 miles from that landing point (Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 6(1)), the owner must ensure that:

929 (1) the information specified in heads (a) to (e) below is collected, in relation to each person on board, before the ship departs from the landing point (reg 6(2)(a)); and

930 (2) that information is communicated to the passenger registrar within 30 minutes of the ship's departure from the landing point, and, in respect of any such information as is specified in

head (e) below, communicated to the master of the ship before the ship leaves the landing point (reg 6(2)(b)).

For these purposes, 'mile' means a nautical mile of 1852 metres: reg 3(1). The information referred to in heads (1) and (2) above is, in relation to each person on board the ship:

- 931 (a) family name (reg 6(3)(a));
- 932 (b) forenames or initials (reg 6(3)(b));
- 933 (c) gender (reg 6(3)(c));
- 934 (d) an indication of the category of age (such category being either adult, child or infant) to which the person belongs or the age or the year of birth of the person (reg 6(3)(d)); and
- 935 (e) if volunteered by a person, any information concerning the need for special care or assistance in emergency situations (reg 6(3)(e)).

If the information in relation to a person indicates the category of age to which the person belongs (see head (d) above) but does not indicate that person's age or year of birth, the information must be accompanied by an indication of the age range used to define each category, and the age range used must be the age range used by the system for the registration of the information established in accordance with reg 8(1) (see PARA 651); reg 6(4). For these purposes, 'international voyage' means a voyage from a country to which the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874), with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277) (as to which see PARA 8) applies to a port outside that country, or conversely: Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 3(1). As to exemptions in relation to reg 6(2) particularly see PARA 652.

A person must not, in connection with a system for counting the persons on board a passenger ship or collecting the information specified in reg 6(3), either knowingly or recklessly make any false statement liable or intended to lead to error in the determination of the total number of persons on board or in the collection of the information specified in reg 6(3), or falsify the information collected or transmitted to the passenger registrar: reg 10. As to offences see PARA 1182.

27 For these purposes, 'Community ship' means a ship which is registered in, or which is entitled to fly the flag of, a member state: Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 3(1). In any Act, 'member state' means a state which is a member of the European Communities: see the European Communities Act 1972 s 1(2), Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1.

28 The information as to the total number of persons on board the ship, and the information specified in the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 6(3) (see note 26): see reg 7.

29 For these purposes, 'appropriate search and rescue services' means, in relation to a ship involved in an emergency, the search and rescue services for the area in which the ship is located; and 'search and rescue services' means the search and rescue services responsible for the initiation and co-ordination of all maritime search and rescue activity required to provide assistance in the event of an emergency involving a ship or its aftermath: Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 3(1).

30 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 7.

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651. System for registering passengers on board.

The owner of a passenger ship¹ must²:

- 680 (1) establish a system for the registration of the information collected in relation to persons³ on board passenger ships⁴ which is in accordance with the requirements of the appropriate Merchant Shipping Notice⁵ and is approved by the Secretary of State⁶;
- 681 (2) appoint a shore-based passenger registrar⁷ who is to be responsible for holding the information so collected⁸ and for its transmission to appropriate search and rescue services⁹ in the event of an emergency or in the aftermath of an accident involving the ship¹⁰; and
- 682 (3) ensure that the information so collected¹¹ is at all times readily available for transmission to the appropriate search and rescue services for use in an emergency or in the aftermath of an accident involving the ship¹².

Any personal data which are collected solely for the purposes of counting and registering persons on board passenger ships¹³ by an owner must be kept only for as long as is necessary for those purposes¹⁴.

The Secretary of State may appoint persons to carry out checks on the proper functioning of registration systems so approved¹⁵; and, in performing such checks, the persons so appointed are entitled to board any ship to which the registration system relates and enter any premises of the passenger registrar¹⁶, and they are to have access to any records and documents, including electronic and computer records, which comprise the owner's registration system¹⁷.

1 I.e a passenger ship to which the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5 or reg 6 applies (see PARA 650): see reg 8(1). As to the meaning of 'passenger ship' and as to the meaning of references to the owner of a ship see PARA 650 note 1.

2 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 8(1). As to exemptions see PARA 652; and as to offences see PARA 1182.

3 As to the meaning of 'person' for these purposes see PARA 650 note 3.

4 I.e information collected pursuant to the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869 (see PARA 650): see reg 8(1)(a).

5 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 8(1)(a)(i). The text refers to Merchant Shipping Notice 1794(M+F): see the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 8(1)(a)(i). As to the meaning of 'Merchant Shipping Notice' see PARA 650 note 8.

6 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 8(1)(a)(ii). As to the Secretary of State see PARA 38.

7 As to the meaning of 'passenger registrar' for these purposes see PARA 650 note 19.

8 I.e collected pursuant to the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869 (see PARA 650): see reg 8(1)(b).

9 As to the meanings of 'appropriate search and rescue services' and 'search and rescue services' for these purposes see PARA 650 note 29.

10 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 8(1)(b).

11 le collected pursuant to the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869 (see PARA 650): see reg 8(1)(c).

12 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 8(1)(c).

13 le collected solely pursuant to the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869 (see PARA 650): see reg 8(2).

14 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 8(2).

15 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 8(3). The text refers to registration systems approved under the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 8: see reg 8(3).

16 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 8(4)(i).

17 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 8(4)(ii).

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652. Exemption from the requirements to count and register passengers on board.

The Secretary of State¹ may exempt any passenger ship² from the requirements of the provisions which require the counting and registration of persons³ on board⁴, subject to such conditions (if any) as he may specify, and may, subject to giving reasonable notice, alter or cancel any exemption so granted⁵.

Without prejudice to this provision, the Secretary of State may exempt any passenger ship⁶:

- 683 (1) leaving any landing point⁷ within the United Kingdom⁸ from the requirement⁹ to communicate to the master of the ship and the passenger registrar¹⁰ the total number of persons on board at that time, in so far as that requirement applies as respects the passenger registrar if the ship is engaged, exclusively in a protected sea area¹¹, on a regular service¹² of less than one hour between calls at landing points¹³; or
- 684 (2) from the requirements¹⁴ placed on the owner of the ship¹⁵ to collect and communicate additional information on persons in respect of any voyage¹⁶ of more than 20 miles from the landing point¹⁷: (a) if, in respect of any United Kingdom passenger ship¹⁸ leaving any landing point outside the territory of the European Community on an international voyage¹⁹, the scheduled voyages of the ship make it impracticable for such records to be prepared²⁰; and (b) if, in respect of any passenger ship leaving any landing point within the United Kingdom, the ship sails exclusively in a protected sea area between two landing points or from and to the same landing point without calling at any intermediate landing point²¹, or the ship is engaged on a regular community service²².

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'passenger ship' for these purposes see PARA 650 note 1.

3 As to the meaning of 'person' for these purposes see PARA 650 note 3.

4 Ie from the requirements of the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869 (see PARAS 650, 651): see reg 9(1).

5 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 9(1).

6 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 9(2).

7 As to the meaning of 'landing point' for these purposes see PARA 650 note 2.

8 As to the meaning of 'United Kingdom' see PARA 17 note 3.

9 Ie from the requirements of the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(4) (see PARA 650): see reg 9(2)(a).

10 As to the meaning of 'passenger registrar' for these purposes see PARA 650 note 19.

11 For these purposes, 'protected sea area' means a sea area sheltered from open sea effects where a ship is at no time more than six miles from a place of refuge where shipwrecked persons can land and in which the proximity of search and rescue facilities is ensured: Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 3(1). As to the meaning of 'search and rescue services' for these purposes see PARA 650 note 29.

12 For these purposes, 'regular service' means a series of ship crossings operated so as to serve traffic between the same two or more ports either according to a published timetable, or with crossings so regular or frequent that they constitute a recognisable systematic series: Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 3(1).

13 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 9(2)(a).

14 le from the requirements of the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 6(2) (see PARA 650): see reg 9(2)(b).

15 As to the meaning of references to the owner of a ship see PARA 650 note 1.

16 As to the meaning of 'voyage' see PARA 650 note 11.

17 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 9(2)(b).

18 As to the meaning of 'United Kingdom passenger ship' see PARA 650 note 1.

19 As to the meaning of 'international voyage' see PARA 650 note 26.

20 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 9(2)(b)(i).

21 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 9(2)(b)(ii)(aa).

22 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 9(2)(b)(ii)(bb). For these purposes, 'regular community service' means a regular service in a sea area where the annual probability of the significant wave height exceeding two metres is less than 10% and either the voyage does not exceed 30 miles or thereabouts from the point of departure, or the primary purpose of the service is to provide regular links to outlying communities for customary purposes: reg 3(1).

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(B) RETURNS REQUIRED AS TO PASSENGERS ON BOARD, BIRTHS ETC

653. Returns to be furnished by masters of ships as to passengers.

The master¹ of every ship², whether or not a United Kingdom ship³, which carries any passenger to a place in the United Kingdom from any place out of the United Kingdom, or from any place in the United Kingdom to any place out of the United Kingdom, must furnish to such person and in such manner as the Secretary of State directs⁴ a return giving the total number of any passengers so carried, distinguishing, if so directed by the Secretary of State, the total number of any class of passengers so carried, and giving, if the Secretary of State so directs, such particulars with respect to passengers as may be for the time being required by the Secretary of State⁵.

Any passenger must furnish the master of the ship with any information required by him for the purpose of the return⁶.

If the master of a ship fails to make a return as required⁷ (or if he makes a false return)⁸, or if any passenger refuses to give any information required by the master of the ship for the purpose of the return so required (or, for that purpose, gives to the master information which he knows to be false, or recklessly gives to him information which is false)⁹, the master or, as the case may be, passenger commits an offence¹⁰.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'ship' see PARA 229.

3 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 As to the Secretary of State see PARA 38; and as to the Secretary of State's power to give directions under the Merchant Shipping Act 1995 generally see PARA 41.

5 Merchant Shipping Act 1995 s 107(1). As to the Secretary of State's power to require statistical returns in respect of carriage of goods and passengers by sea from any person carrying on business or trade in the maritime transport sector see PARA 44.

6 Merchant Shipping Act 1995 s 107(2).

7 As required by the Merchant Shipping Act 1995 s 107(1), (2) (see the text and notes 1-6): see s 107(3) (a); and PARA 1184.

8 See the Merchant Shipping Act 1995 s 107(3)(a); and PARA 1184.

9 See the Merchant Shipping Act 1995 s 107(3)(b); and PARA 1184.

10 See the Merchant Shipping Act 1995 s 107(3); and PARA 1184.

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654. Returns of births and deaths in ships etc; power to make regulations.

The Secretary of State¹ may make regulations² in relation to births and deaths in the circumstances specified therein³. Such regulations may require:

- 685 (1) the master⁴ of any United Kingdom ship⁵ to make a return to a superintendent⁶ or proper officer⁷ of the birth or death of any person occurring in the ship⁸ and the death of any person employed in the ship, wherever occurring outside the United Kingdom, and to notify any such death to such person, if any, as the deceased may have named to him as his next of kin⁹;
- 686 (2) the master of any ship not registered in the United Kingdom which calls at a port¹⁰ in the United Kingdom in the course of or at the end of a voyage to make a return to a superintendent of any birth or death of a British citizen¹¹, a British overseas territories citizen¹² or a British Overseas citizen¹³ which has occurred in the ship during the voyage¹⁴.

The returns referred to in heads (1) and (2) above are for transmission to the Registrar General of Shipping and Seamen¹⁵. Such regulations may require the Registrar General of Shipping and Seamen to record such information as may be specified in the regulations about such a death as is referred to in head (1) above in a case where it appears to him that the master of the ship cannot perform his duty because he has himself died or is incapacitated or missing¹⁶, and where any of the following circumstances exist¹⁷, namely that:

- 687 (a) the death in question has been the subject of an inquest held by a coroner or a statutory inquiry held into the cause of death of a crew member or others on board¹⁸, and the findings of the inquest or inquiry include a finding that the death occurred¹⁹;
- 688 (b) the deceased's body has been the subject of a post-mortem examination, and in consequence the coroner is satisfied that an inquest is unnecessary²⁰.

Such regulations may require the Registrar General of Shipping and Seamen to send a certified copy of any return or record made thereunder to the Registrar General for England and Wales²¹, the Registrar General of Births, Deaths and Marriages for Scotland or the Registrar General for Northern Ireland, as the case may require²². The Registrar General to whom any such certified copies are sent must record the information contained therein in the marine register, and may record in the marine register such additional information as appears to him desirable for the purpose of ensuring the completeness and correctness of the register²³.

Such regulations may make a contravention²⁴ of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 2 on the standard scale²⁵ or not exceeding a lesser amount²⁶; and they may contain provisions authorising the registration of the following births and deaths occurring outside the United Kingdom in circumstances where no other such return is required to be made²⁷:

- 689 (i) any birth or death of a British Citizen, a British overseas territories citizen or a British Overseas citizen which occurs in a ship not registered in the United Kingdom²⁸;
- 690 (ii) any death of any such citizen who has been employed in a ship not registered in the United Kingdom which occurs elsewhere than in the ship²⁹; and
- 691 (iii) any death of a person who has been employed in a United Kingdom ship which occurs elsewhere than in the ship³⁰.

1 As to the Secretary of State see PARA 38.

2 Ie under the Merchant Shipping Act 1995 s 108(2)-(11) (see the text and notes 4-30): see s 108(1). At the date at which this volume states the law, no such regulations had been made under s 108 but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577 (amended by SI 1991/1366) (see PARA 655) have effect as if so made. As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41; and as to the Secretary of State's power to make regulations prescribing fees to be charged in respect of the issue or recording of any certificate, licence or other document see PARA 62.

3 Merchant Shipping Act 1995 s 108(1).

4 As to the meaning of 'master' see PARA 424.

5 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

6 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

7 As to the meaning of 'proper officer' see PARA 48 note 11.

8 For these purposes, references to deaths occurring in a ship include references to deaths occurring in a ship's boat: Merchant Shipping Act 1995 s 108(11).

9 Merchant Shipping Act 1995 s 108(2). As to the admissibility in evidence and public inspection of returns or reports so made see PARA 1109.

10 As to the meaning of 'port' see PARA 46 note 12.

11 As to the meaning of 'British citizen' see PARA 19 note 7.

12 As to the meaning of 'British overseas territories citizen' see PARA 19 note 8.

13 As to the meaning of 'British Overseas citizen' see PARA 19 note 9.

14 Merchant Shipping Act 1995 s 108(3) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)).

15 Merchant Shipping Act 1995 s 108(4). Returns or reports under s 108 are admissible in evidence and, when in the custody of the Registrar General of Shipping and Seamen, are open to public inspection: see s 287(1)(d); and PARA 1109. As to the Registrar General of Shipping and Seamen see PARA 61.

16 Merchant Shipping Act 1995 s 108(5)(a).

17 Merchant Shipping Act 1995 s 108(5)(b).

18 Ie an inquiry held in pursuance of the Merchant Shipping Act 1995 s 271 (see PARA 873): see s 108(6)(a).

19 Merchant Shipping Act 1995 s 108(6)(a).

20 Merchant Shipping Act 1995 s 108(6)(b).

21 As to the Registrar General of Births, Deaths and Marriages in England see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARA 605 et seq. As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

22 Merchant Shipping Act 1995 s 108(7).

23 Merchant Shipping Act 1995 s 108(8). The enactments relating to the registration of births and deaths in England, Scotland and Northern Ireland have effect as if the marine register were a register of births, other than stillbirths, or deaths or certified copies of entries in such a register had been transmitted to the Registrar General in accordance with those enactments: see s 108(8).

24 As to the meaning of 'contravention' see PARA 50 note 3.

25 As to the meaning of 'standard scale' see PARA 1099.

26 Merchant Shipping Act 1995 s 108(9).

27 Ie where no return is required to be made under the Merchant Shipping Act 1995 s 108(1)-(9) (see the text and notes 1-26): see s 108(10).

28 Merchant Shipping Act 1995 s 108(10)(a) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)).

29 Merchant Shipping Act 1995 s 108(10)(b).

30 Merchant Shipping Act 1995 s 108(10)(c).

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655. Requirement to register births and deaths on board ship.

Where a child is born in a ship registered in the United Kingdom¹, the master of the ship must make a return of the birth²; and where: (1) any person dies in a ship registered in the United Kingdom³; or (2) any person employed in any such ship dies outside the United Kingdom⁴, the master of the ship must make a return of the death⁵ and, as soon as practicable but no more than three days after the death, must notify the death to such person, if any, as the deceased may have named as his next of kin⁶.

Where a citizen of the United Kingdom and Colonies⁷ is born or dies in a ship not registered in the United Kingdom, and the ship thereafter calls at a port in the United Kingdom in the course of or at the end of the voyage during which the death occurs, the master of the ship must make a return of the birth or death⁸.

Any return of a birth or of a death occurring in a ship registered in the United Kingdom⁹ must be made by the master of the ship as soon as practicable, but within six months, after the birth or death to which it relates¹⁰; and:

- 692 (a) in the case of a birth or death which occurs in the ship, must be made to a superintendent¹¹ or proper officer¹² for the place where the ship is at the time of the birth or death, or at which it next calls thereafter¹³; and
- 693 (b) in the case of a death which occurs elsewhere than in a ship, must be made to a superintendent or proper officer for the place where the ship is when the master first becomes aware of the death or at which it next calls thereafter¹⁴.

Any return of a birth or of a death of a citizen of the United Kingdom and Colonies occurring in a ship not registered in the United Kingdom but which thereafter calls at a port in the United Kingdom in the course of or at the end of the voyage¹⁵ must be made by the master of the ship to a superintendent for that port in the United Kingdom before the ship leaves that port¹⁶.

When a return of a birth or death duly made¹⁷ has been transmitted to him, or when a record of a death (where the master is unable to act)¹⁸ has been made by him, the Registrar General of Shipping and Seamen must send a copy of that return or record, certified by him or by a person authorised by him for that purpose to be a true copy, to the appropriate Registrar General¹⁹. The following births and deaths occurring outside the United Kingdom in circumstances where no return or record is otherwise required may also be recorded in the marine register by the appropriate Registrar General as he thinks fit, if he is satisfied that such a birth or death has occurred²⁰, namely:

- 694 (i) any birth or death of a citizen of the United Kingdom and Colonies which occurs in a ship not registered in the United Kingdom²¹;
- 695 (ii) any death of a citizen of the United Kingdom and Colonies who has been employed in such a ship which occurs elsewhere than in the ship²²; and
- 696 (iii) any death of a person who has been employed in a ship registered in the United Kingdom which occurs elsewhere than in the ship²³.

The master of a ship who fails to comply with any of the provisions which require returns to be made as to births and deaths occurring in his ship²⁴ is guilty of an offence²⁵.

1 As to the meaning of 'United Kingdom' see PARA 17 note 3. The provisions of the Merchant Shipping Act 1995 s 108 (see PARA 654) and of the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, except reg 4 (see the text and notes 7-8), and reg 10(1)(a) (see head (i) in the text) and reg 10(1)(b) (see head (ii) in the text) extend to ships which are sea-going ships (not registered in the United Kingdom or elsewhere) which are owned by a person resident in, or by a body corporate having a principal place of business in, the United Kingdom, and masters and seamen employed in them: Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 12(1) (amended by SI 1991/1366); Interpretation Act 1978 s 17(2)(b). However, in such a case, the particulars required to be contained in records or returns by the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, Sch 1 (see notes 10, 16) and Sch 2 (see notes 6, 16), as extended by reg 12(1), are subject to certain modifications: see reg 12(2).

2 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 2. The return required as mentioned in the text must be made in accordance with regs 5, 6 (see the text and notes 9-16): see reg 2.

3 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 3(a).

4 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 3(b).

5 The return required by the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 3 must be made in accordance with regs 5, 6 (see the text and notes 9-16): see reg 3.

6 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 3. Where it appears to the Registrar General of Shipping and Seamen that the master of the ship cannot perform the duty imposed on him by virtue of reg 3 in respect of the death because he has himself died or is incapacitated or missing (reg 7); and either

936 (1) the death in question has been the subject of an inquest held by the coroner or a statutory inquiry held under the Merchant Shipping Act 1995 s 271 (see PARA 873), and the findings of the inquest or inquiry include a finding that the death occurred (Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 7(1)); or

937 (2) a post-mortem examination has been made of the deceased's body and in consequence the coroner is satisfied that an inquest is unnecessary (reg 7(2)),

then the Registrar General of Shipping and Seamen must record such of the information specified in reg 7, Sch 2 (see note 10) as he may be able to obtain in the circumstances of death: reg 7; Interpretation Act 1978 s 17(2)(b). However, in circumstances where:

938 (a) an inquest is held on a dead body or touching a death or a post-mortem examination is made of a dead body as a result of which the coroner is satisfied that an inquest is unnecessary (Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 8(1)); and

939 (b) it appears to the coroner that the death in question is such as is mentioned in reg 3(a) (see head (1) in the text) or in reg 3(b) (see head (2) in the text), as extended by reg 12(1) (see note 1) (reg 8(2)),

it is the duty of the coroner to send to the Registrar General of Shipping and Seamen particulars in respect of the deceased of the kind specified in reg 8, Sch 3: reg 8. Accordingly, the particulars that are required to be sent by coroners in respect of deaths under reg 8 relate to: the ship in which death occurred or in which the deceased was employed; the deceased; and the Coroner's certificate: see Sch 3. As to the Registrar General of Shipping and Seamen see PARA 61.

7 As to the meaning of 'colony' for the purposes of the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 17.

8 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 4. The return required as mentioned in the text must be made in accordance with regs 5, 6 (see the text and notes 9-16): see reg 4.

9 ie a return required to be made under the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 2 (see the text and notes 1-2) or reg 3 (see the text and notes 3-6): see reg 5(1).

10 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 5(1). Without prejudice to reg 5(1), and to the provisions of reg 13 (offences) (see PARA 1185), a return of a birth or of a death required to be made under reg 2 (see the text and notes 1-2) or reg 3 (see the text and notes 3-6) which is not made within the prescribed period or is made to a superintendent or proper officer other than that specified in reg 5(1) (see heads (a), (b) in the text) is not invalid by reason only that it is not made within that period or to that specified person: reg 5(3). A return of a birth or of a death required to be made under the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, must be in writing, must be signed by the master of the ship as informant, and must contain (in the case of a birth) the particulars specified in Sch 1, or (in the case of a death) the particulars specified in Sch 2, or in either case so many of those particulars as the master may reasonably be able to obtain, having regard to the circumstances of the birth or of the death: reg 6. Accordingly, the particulars that are required to be contained in returns of births (or authorised to be recorded in the marine register) relate to: the ship in which birth occurred; the child; the father; the mother; and the informant: see Sch 1. The particulars that are required to be contained in returns or records of deaths (or authorised to be recorded in the marine register) relate to: the ship in which death occurred or in which the deceased was employed; the deceased; and the informant: see Sch 2.

11 As to the meaning of 'superintendent' see PARA 60 note 1.

12 As to the meaning of 'proper officer' see PARA 48 note 11.

13 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 5(1)(a).

14 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 5(1)(b).

15 Is a return required to be made under the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 4 (see the text and notes 7-8): see reg 5(2).

16 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 5(2). Without prejudice to reg 5(2), and to the provisions of reg 13 (offences) (see PARA 1185), a return of a birth or of a death required to be made under reg 4 (see the text and notes 7-8) which is not made within the prescribed period or is made to a superintendent or proper officer other than that specified in reg 5(2) is not invalid by reason only that it is not made within that period or to that specified person: reg 5(3). A return of a birth or of a death required to be made under the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, must be in writing, must be signed by the master of the ship as informant, and must contain (in the case of a birth) the particulars specified in Sch 1 (see note 10), or (in the case of a death) the particulars specified in Sch 2 (see note 10), or in either case so many of those particulars as the master may reasonably be able to obtain, having regard to the circumstances of the birth or of the death: reg 6.

17 Is a return made in accordance with the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, regs 5, 6 (see the text and notes 9-16): see reg 9.

18 Is a record made in accordance with the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 7 (see note 6): see reg 9.

19 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 9. The appropriate Registrar General for the purposes of regs 9, 10 is the Registrar General for England and Wales: see reg 11. As to the Registrar General of Births, Deaths and Marriages in England see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARA 605 et seq. As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

20 See the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 10(1), (2). In the case of a birth, such of the particulars specified in Sch 1 may be recorded in the marine register as he thinks fit: see reg 10(2)(a). In the case of a death, such of the particulars specified in Sch 2 may be so recorded as he thinks fit: see reg 10(2)(b).

21 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 10(1)(a).

22 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 10(1)(b).

23 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 10(1)(c).

24 Is the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, regs 2-6 (see the text and notes 1-16), or those regulations (except reg 4) as extended by reg 12 (see note 1): see reg 13; and PARA 1185.

25 See the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 13; and PARA 1185.

UPDATE

655 Requirement to register births and deaths on board ship

TEXT AND NOTES--SI 1979/1577 further amended: SI 2009/1892.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/7. SAFETY AND SECURITY AT SEA/ (1) SAFETY AND HEALTH ON SHIPS/(v) Carriage of Dangerous Goods by Ship/656. Dangerous goods in general.

(v) Carriage of Dangerous Goods by Ship

656. Dangerous goods in general.

Where any dangerous goods¹ have been sent or carried, or attempted to be sent or carried, on board any ship², whether or not a United Kingdom ship³:

- 697 (1) without being marked as required by safety regulations⁴;
- 698 (2) without such notice having been given as is required by safety regulations⁵;
- 699 (3) under a false description⁶; or
- 700 (4) with a false description of their sender or carrier⁷,

any court having Admiralty jurisdiction⁸ may declare the goods, and any package or receptacle in which they are contained, to be forfeited⁹.

On a declaration of forfeiture being made, the goods are forfeited and they must be disposed of as the court directs¹⁰.

The powers so conferred on the court¹¹ are exercisable notwithstanding that the owner of the goods¹²:

- 701 (a) has not committed any offence under safety regulations relating to dangerous goods¹³;
- 702 (b) is not before the court¹⁴; and
- 703 (c) has no notice of the proceedings¹⁵;

and notwithstanding that there is no evidence to show to whom the goods belong¹⁶.

Nevertheless the court may, in its discretion, require such notice as it may direct to be given to the owner or shipper of the goods before they are forfeited¹⁷.

1 For these purposes, 'dangerous goods' means goods designated as dangerous goods by safety regulations: Merchant Shipping Act 1995 s 87(5). As to the meaning of 'safety regulations' see PARA 591; and see the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, made under the Merchant Shipping Act 1995 s 85 and other powers (cited in PARA 657).

2 As to the meaning of 'ship' see PARA 229.

3 Merchant Shipping Act 1995 s 87(1). As to the meaning of 'United Kingdom ship' see PARA 230.

4 Merchant Shipping Act 1995 s 87(1)(a).

5 Merchant Shipping Act 1995 s 87(1)(b).

6 Merchant Shipping Act 1995 s 87(1)(c).

7 Merchant Shipping Act 1995 s 87(1)(d).

8 As to the Admiralty jurisdiction of the High Court generally see PARA 85 et seq.

- 9 Merchant Shipping Act 1995 s 87(1).
- 10 Merchant Shipping Act 1995 s 87(2).
- 11 le by the Merchant Shipping Act 1995 s 87(1), (2) (see the text and notes 1-10): see s 87(3).
- 12 Merchant Shipping Act 1995 s 87(3).
- 13 Merchant Shipping Act 1995 s 87(3)(a).
- 14 Merchant Shipping Act 1995 s 87(3)(b).
- 15 Merchant Shipping Act 1995 s 87(3)(c).
- 16 Merchant Shipping Act 1995 s 87(3).
- 17 Merchant Shipping Act 1995 s 87(4).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/7. SAFETY AND SECURITY AT SEA/ (1) SAFETY AND HEALTH ON SHIPS/(v) Carriage of Dangerous Goods by Ship/657. Handling, stowage, carriage of dangerous goods and marine pollutants by merchant shipping.

657. Handling, stowage, carriage of dangerous goods and marine pollutants by merchant shipping.

It is the duty of every operator¹, every employer of persons aboard a ship and every master of a ship to ensure that, so far as is reasonably practicable, when dangerous goods are being handled², stowed or carried on the ship nothing in the manner in which those goods are handled, stowed or carried as the case may be is such as might create a significant risk to the health and safety of any person³.

It is the duty of every employee⁴ aboard ship⁵:

- 704 (1) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions in connection with the handling, stowage and carriage of dangerous goods in the ship⁶; and
- 705 (2) as regards any duty or requirement imposed on the operator, or the employee's employer by the Merchant Shipping Act 1995 or any regulation or rule made thereunder with regard to the health and safety of persons aboard a ship⁷, to cooperate with the operator or employer so far as is necessary to enable that duty or requirement to be performed or complied with in connection with the handling, stowage and carriage of dangerous goods in the ship⁸.

In connection with the handling, stowage and carriage of dangerous goods in a United Kingdom ship, no person may intentionally or recklessly interfere with or misuse anything provided on, or disobey instructions displayed on, the ship in the interests of health or safety in pursuance of the Merchant Shipping Act 1995 or any regulation or rule made thereunder⁹.

Further provision is made in relation to the carriage of packaged dangerous goods or packaged marine pollutants¹⁰, the carriage of dangerous goods or marine pollutants in bulk¹¹, and spaces for the carriage of packaged goods and dangerous goods in solid form in bulk¹².

The Secretary of State¹³ may grant exemptions from all or any of the provisions relating to such handling, stowage and carriage of dangerous goods and marine pollutants¹⁴ (as may be specified in the exemption) for classes of cases or individual cases on such terms (if any) as he may so specify and may, subject to giving reasonable notice, alter or cancel any such exemption¹⁵.

1 For these purposes, 'operator' in relation to a ship includes any owner, charterer, manager and agent of the ship: Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 2(1).

The Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, apply to ships carrying dangerous goods in bulk or packaged form or marine pollutants in packaged form (reg 5(1)); and they apply to United Kingdom ships wherever they may be and to other ships while they are within the United Kingdom waters (reg 5(2)). For these purposes, 'dangerous goods' means goods classified in the IMDG Code or in any other publication of the International Maritime Organisation ('IMO') referred to in the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, as dangerous for carriage by sea, and any other substance or article that the shipper has reasonable cause to believe might meet the criteria for such classification; and the expression includes residues in empty receptacles, empty tanks or cargo holds which have been used previously for the carriage of dangerous goods unless such receptacles, empty tanks or cargo holds have been cleaned and dried, purged, gas freed or ventilated as appropriate or, in the case of

radioactive materials, have been both cleaned and adequately closed, and goods labelled, marked or declared as dangerous goods; but the expression does not include goods forming part of the equipment or stores of the ship in which they are carried; 'in bulk' means directly and without intermediate form of containment in a hold, tank or cargo space, which is a structural part of or permanently attached to a ship: reg 2(1). 'IMDG Code' means the 2002 edition of the IMO International Maritime Dangerous Goods Code: Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 2(1) (definition substituted by SI 2004/2110). For these purposes, 'marine pollutant' means a substance classified as such in the IMDG Code, or as a noxious liquid substance in the IBC Code, oil as defined in Annex I to the MARPOL Convention, excluding bunkers and ship's stores and any other substance, material or article that the shipper has reasonable cause to believe might meet the criteria for such classification: Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 2(1) (definition amended by SI 2004/2110). 'IBC Code' means the 1998 Edition of the IMO International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk: Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 2(1) (definition amended by SI 2004/2110). 'MARPOL Convention' means the International Convention for the Prevention of Pollution from Ships (London, 8 October to 2 November 1973; Misc 26 (1974); Cmnd 5748), with Protocol (London, 1 June 1978 to 31 May 1979; Misc 27 (1978); Cmnd 7347) (see PARA 8): Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 2(1) (definition added by SI 2004/2110). For these purposes, 'United Kingdom ship' means a ship or hovercraft which is registered under the Merchant Shipping Act 1995 Pt II (ss 8-23) (see PARA 245 et seq), is registered under the Hovercraft Act 1968 (as to which see PARA 390 et seq), is a government ship within the meaning of the Merchant Shipping Act 1995 s 308(4) (see PARA 20 note 3) used for commercial purposes, or is not registered under the law of any other country but is wholly owned by persons each of whom is a British citizen, a British overseas territories citizen or a British Overseas citizen, or is a body corporate which is established under the law of a part of the United Kingdom and has its principal place of business in the United Kingdom: Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 2(1) (definition amended by virtue of the British Overseas Territories Act 2002 s 2(3)). As to the meaning of 'British citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq; as to the meaning of 'British overseas territories citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 44-57; and as to the meaning of 'British Overseas citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 58 et seq. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the International Maritime Organisation see PARA 13.

2 For these purposes, 'handling' includes the operations of loading, unloading and transferring dangerous goods or marine pollutants and cleaning, purging, gasfreeing, ullaging, sounding, sampling and similar operations required for the carriage of such goods in a ship; and cognate expressions are to be construed accordingly: Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 2(1).

3 See the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 6. If an employer, operator or master fails to comply with the requirements of reg 6 he commits an offence: see PARA 1186. As to the carriage of packaged irradiated nuclear fuel by sea see PARA 658; and as to the reporting requirements for ships carrying dangerous or polluting goods see PARA 659.

4 For these purposes, 'employee' means a person (including the master but excluding dock workers or shore-based repair or other workers temporarily employed on board the ship) employed either in the deck, engine, radio, medical or catering department of a ship, or in the provision of goods, services or entertainment on board: Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 2(1).

5 See the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 7. If any employee aboard a ship carrying dangerous goods fails to comply with the requirements of reg 7 he commits an offence: see PARA 1186.

6 See the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 7; and see note 5.

7 Is a ship to which the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, apply (as to which see note 1): see reg 7.

8 See the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 7; and see note 5.

9 See the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 8. If any person aboard a ship carrying dangerous goods fails to comply with the requirements of reg 8 he commits an offence: see PARA 1186.

10 See the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, Pt II (regs 10-19), which makes provision in relation to: the dangerous goods declaration or marine pollutants

declaration (reg 10 (amended by SI 2004/2110)); the preparation of goods for transport (the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 11); Container or Vehicle Packing Certificates (reg 12); the required documentation which may be provided directly to the master or operator in the form of a paper document or by electronic data processing or electronic data interchange methods (reg 13); list, manifest or stowage plans (reg 14); the marking, labelling or placarding of packaged goods (reg 15); the stowage of packaged goods on board ship (reg 16); cargo securing documentation (regs 17, 18); and the duty of operator and master to ensure that all employees are familiar with the essential actions to be taken in an emergency involving such packaged goods as are carried on the ship (reg 19). As to related offences see PARA 1186.

11 See the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, Pt III (regs 20-21), which makes provision in relation to: dangerous goods or marine pollutants handled or carried in bulk (reg 20); and the required documentation relating to such goods or pollutants (reg 21 (amended by SI 2004/2110)). As to related offences see PARA 1186.

12 See the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, Pt IV (reg 22). As to related offences see PARA 1186.

13 As to the Secretary of State see PARA 38.

14 Ie from all or any of the provisions of the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367 (see the text and notes 1-12): see reg 4.

15 See the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 4.

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658. Carriage of packaged irradiated nuclear fuel by sea.

Every ship carrying INF cargo¹ must be constructed, equipped, inspected and surveyed in accordance with the requirements of the INF Code²; and the operator³ and master must ensure that a ship carrying INF cargo complies with the requirements of the INF Code⁴.

The Secretary of State⁵ must, on the application of the operator of a ship registered in the United Kingdom, if he is satisfied that the ship complies with the requirements of the INF Code, issue to the operator a Certificate of Fitness certifying compliance with the INF Code⁶; and an operator or master must not accept INF cargo for carriage in a ship which has not been issued with a Certificate of Fitness either by the Secretary of State⁷, or by the administration of the state whose flag the ship is entitled to fly⁸.

Any contravention by the operator or master of their duty to ensure that a ship carrying INF cargo complies with the requirements of the INF Code⁹ or of their duty to refuse such cargo for carriage in a ship which has not been issued with such a Certificate of Fitness¹⁰ is an offence for which each of them is liable¹¹; and, in any case where a ship does not comply with those requirements, the ship may be detained¹².

1 For these purposes, 'INF cargo' means packaged irradiated nuclear fuel, plutonium and high-level radioactive wastes carried as cargo; 'high-level radioactive wastes' means liquid wastes resulting from the operation of the first stage extraction system or the concentrated wastes from subsequent extraction stages, in a facility for reprocessing irradiated nuclear fuel, or solids into which such liquid wastes have been converted; 'irradiated nuclear fuel' means material containing uranium, thorium or plutonium isotopes which has been used to maintain a self-sustaining nuclear chain reaction; and 'plutonium' means the resultant mixture of isotopes of that material extracted from the reprocessing of irradiated nuclear fuel: see the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 2(1).

The Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, apply to ships carrying INF cargo (reg 3(1)), in particular United Kingdom ships wherever they may be, and other ships which are in United Kingdom waters (reg 3(2)). In relation to hovercraft, the regulations have effect subject to the modification that for any reference to a ship or ships, there is respectively to be substituted a reference to a hovercraft or to hovercraft: reg 3(3). For these purposes, 'United Kingdom ship' means a ship or hovercraft which is registered under the Merchant Shipping Act 1995 Pt II (ss 8-23) (see PARA 245 et seq), is registered under the Hovercraft Act 1968 (as to which see PARA 390 et seq), is a government ship within the meaning of the Merchant Shipping Act 1995 s 308(4) (see PARA 20 note 3) used for commercial purposes, or is not registered under the law of any other country but is wholly owned by persons each of whom is a British citizen, a British overseas territories citizen or a British Overseas citizen, or is a body corporate which is established under the law of a part of the United Kingdom and has its principal place of business in the United Kingdom: Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 2(1) (definition amended by virtue of the British Overseas Territories Act 2002 s 2(3)). As to the meaning of 'British citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq; as to the meaning of 'British overseas territories citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 44-57; and as to the meaning of 'British Overseas citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 58 et seq. As to the meaning of 'United Kingdom' see PARA 17 note 3.

As to the handling, stowage, carriage of dangerous goods and marine pollutants by merchant shipping generally see PARA 657; and as to the reporting requirements for ships carrying dangerous or polluting goods see PARA 659.

2 Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 4(1). For these purposes, 'INF Code' means the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships adopted on 27 May 1999 by the Maritime Safety Committee of the International Maritime Organisation ('IMO') by resolution

MSC 88(71) and set out in the Annex thereto: Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 2(1). As to the International Maritime Organisation see PARA 13.

3 For these purposes, 'operator' in relation to a ship includes any owner, charterer, manager and agent of the ship: Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 2(1).

4 Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 4(2).

5 As to the Secretary of State see PARA 38.

6 Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 4(3). For these purposes, 'Certificate of Fitness' means the International Certificate of Fitness for the Carriage of INF Cargo, as provided for in the INF Code: reg 2(1).

7 *Ie* as mentioned in the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 4(3) (see the text and notes 5-6): see reg 5.

8 Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 5.

9 *Ie* where there is a breach of the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 4(2) (see the text and notes 3-4): see reg 6; and PARA 1186.

10 *Ie* where there is a breach of the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 5 (see the text and notes 7-8): see reg 6; and PARA 1186.

11 See the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, regs 6, 8; and PARA 1186.

12 See the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 7; and PARA 1186.

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659. Reporting requirements for ships carrying dangerous or polluting goods.

Before a United Kingdom ship¹, which is bound for a port which is not located in an EEA state² and is carrying dangerous goods³ or harmful substances in packaged form⁴, leaves a port which is not located in an EEA state, the operator of that ship must comply with specified requirements of the appropriate Merchant Shipping Notice⁵ which conforms to the Consolidated European Reporting System ('CERS')⁶. Further provision is made in relation to the reporting of incidents⁷ and for offences and penalties to apply in cases of contravention⁸.

1 le a United Kingdom ship irrespective of size: see the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 5(1) (reg 5 substituted by SI 2004/2110). For these purposes, 'United Kingdom ship' means a ship which is registered in the United Kingdom, or is not registered under the law of any country but is wholly owned by persons each of whom is a British Citizen, a British overseas territories citizen or a British Overseas citizen, or is a body corporate which is established under the law of any part of the United Kingdom and has its principal place of business in the United Kingdom: see the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 2(4) (added by SI 2004/2110). As to the meaning of 'British citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq; as to the meaning of 'British overseas territories citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 44-57; and as to the meaning of 'British Overseas citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 58 et seq. As to the meaning of 'United Kingdom' see PARA 17 note 3.

For these purposes, 'ship' includes a vessel of any type whatsoever operating in the marine environment or in other waters navigable by sea-going vessels and (without prejudice to the generality of the foregoing) includes submersible craft, floating craft and hovercraft: Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 2(2) (definition amended by SI 1999/2121). As to the ships to which the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, apply see reg 3 (substituted by SI 2005/1092).

2 For these purposes, 'EEA state' means a member state, Norway, Iceland or Liechtenstein: Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 5(3) (as substituted: see note 1). In any Act, 'member state' means a state which is a member of the European Communities: see the European Communities Act 1972 s 1(2), Sch 1 Pt II; and the Interpretation Act 1978 s 5, Sch 1.

3 For these purposes, 'dangerous goods' means goods classified as such in the IMDG Code including radioactive materials as referred to in the INF Code, in the IGC-Code Ch 19 or in the IBC-Code Ch 17: Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 2(2) (definition amended by SI 1999/2121). 'IBC Code' means the 1998 edition of the International Maritime Organisation ('IMO') International Code for Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk: Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 2(2) (definition amended by SI 2004/2110). 'IGC Code' means the 1993 edition of the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk published by the IMO: Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 2(2) (definition amended by SI 2004/2110). 'IMDG Code' means the 2002 edition of the International Maritime Dangerous Goods Code published by the IMO: Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 2(2) (definition amended by SI 2004/2110). 'INF Code' means the 2001 edition of the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuels, Plutonium and High-Level Radioactive Waste on Board Ships: Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 2(2) (definition substituted by SI 2004/2110). For the purposes of the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 5, in relation to a ship, bunkers, stores and equipment for use on board that ship are not to be regarded as dangerous goods or harmful substances in packaged form: see reg 3(9) (reg 3 as substituted: see note 1). As to the International Maritime Organisation see PARA 13. As to the handling,

stowage, carriage of dangerous goods and marine pollutants by merchant shipping generally see PARA 657; and as to the carriage of packaged irradiated nuclear fuel by sea see PARA 658.

4 For these purposes, 'harmful substances in packaged form' has the meaning given by MARPOL Annex III: Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 2(2) (definition added by SI 1999/2121). 'MARPOL' means the International Convention for the Prevention of Pollution from Ships (London, 8 October to 2 November 1973; Misc 26 (1974); Cmnd 5748), with Protocol (London, 1 June 1978 to 31 May 1979; Misc 27 (1978); Cmnd 7347) (see PARA 8); Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 2(2) (definition amended by SI 2005/1092).

5 For these purposes, 'Merchant Shipping Notice' means a Notice described as such, issued by the Secretary of State, and includes a reference to any document amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice: Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 2(2) (definition amended by SI 1999/2121). As to the Secretary of State see PARA 38.

6 Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 5(2) (as substituted: see note 1). The text refers to the requirements of Merchant Shipping Notice 1817(M+F): see the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 5(2) (as so substituted). Merchant Shipping Notice 1817(M+F) details the technical requirements applicable to ships and United Kingdom port authorities to comply with the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004, SI 2004/2110 (amended by SI 2005/1092), which amended the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, and implemented EC Directive 2002/59 of the European Parliament and of the Council of 27 June 2002 (OJ L208, 05.08.2002, p 10) establishing a Community vessel traffic monitoring and information system and repealing EC Council Directive 93/75. Accordingly, Merchant Shipping Notice 1817(M+F) concerns itself with the Consolidated European Reporting System ('CERS'), in particular as it relates to ship arrival and departure notifications (including additional requirements for ships carrying dangerous or polluting goods) and the reporting requirements in the event of an accident or incident: see Merchant Shipping Notice 1817(M+F).

Any person duly authorised by the Secretary of State may inspect any ship to which the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, apply and, if he is satisfied that there is a failure to comply in relation to that ship with relation to the requirements of reg 5, he may detain the ship until such requirements are met: see reg 17; and PARA 1186.

The Secretary of State may require by notice in writing any person carrying on business or trade in the maritime transport sector to furnish, in the specified form and manner and within the specified time, periodical or other returns about cargo, passenger and vessel movement, certain particulars in relation to the transport of containers or ro-ro units, and information in relation to the vessel: see the Statistical Returns (Carriage of Goods and Passengers by Sea) Regulations 1997, SI 1997/2330; and PARA 44.

7 See the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 9 (amended by SI 1999/2121; SI 2004/2110; SI 2005/1092); and see the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 10 (supplementary reports); and reg 11 (amended by SI 2004/2110) (reporting procedures). For these purposes, 'incident' means damage, failure or breakdown which affects the safety of the ship, failure or breakdown of machinery or equipment which results in impairment of the safety of navigation, including any circumstances when a vessel is 'not under command', or any circumstances at sea which have caused actual damage or any other condition which affects the safety of any vessel or persons or which has or may cause damage or discharge into the marine environment: Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 2(2) (definition amended by SI 2005/1092). The Maritime and Coastguard Agency ('MCA') must, as necessary, broadcast within the relevant areas information about any incident notified under the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 9, and information with regard to any vessel which poses a threat to other shipping: reg 19 (amended by SI 2004/2110). As to the Maritime and Coastguard Agency see PARA 56.

8 See the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, regs 15, 16 (offences); regs 17, 18 (inspection and detention of ships); and PARA 1186.

UPDATE

659 Reporting requirements for ships carrying dangerous or polluting goods

NOTE 1--SI 1995/2498 reg 3 amended: SI 2008/3145.

NOTE 6--SI 2004/2110 further amended: SI 2008/3145. Directive 2002/59 amended:
European Parliament and EC Council Directive 2009/17 (OJ L131, 28.5.2009, p 101).

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(vi) Carriage of Cargoes requiring Special Precautions

A. IN GENERAL

660. Cargo information.

The shipper¹ must provide such information ('cargo information')² to the owner or master sufficiently in advance of loading as is necessary to enable them to ensure that³:

- 706 (1) the different commodities to be carried are compatible with each other or suitably separated⁴;
- 707 (2) the cargo is suitable for the ship⁵;
- 708 (3) the ship is suitable for the cargo⁶; and
- 709 (4) the cargo can be safely stowed and secured on board the ship and transported under all expected conditions during the intended voyage⁷.

The information must be confirmed in writing and by appropriate shipping documents prior to loading the cargo on the ship⁸.

In preparing cargo units for carriage by ships, the shipper (or, as the case may be, the forwarder⁹) must ensure that the gross mass of such units is in accordance with the gross mass declared on the shipping documents¹⁰. Where the shipper does not deliver the cargo to the ship or its agent he must provide the forwarder with such cargo information¹¹; and if the shipper does not deliver the cargo to the ship or its agent it is the duty of the forwarder to provide the owner or master with the appropriate cargo information¹².

If a shipper or forwarder fails to provide appropriate cargo information as so required¹³, or furnishes cargo information which he knows to be false or recklessly furnishes cargo information which is false, he is guilty of an offence¹⁴; and if an owner or master accepts for carriage, or takes or receives on board any cargo for which appropriate cargo information as so required¹⁵ has not been furnished, he is guilty of an offence¹⁶.

1 For these purposes, 'shipper' means any person who, whether as principal or agent for another, consigns goods for carriage by sea: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1). The Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, apply to sea-going United Kingdom ships wherever they may be, and to sea-going ships which are not United Kingdom ships while they are within United Kingdom waters, when loaded or intended to be loaded with any cargo: reg 3(1). For these purposes, 'cargo' means any cargo which, owing to its particular hazard to ships or persons on board, may require special precautions, with the exception of liquids carried in bulk and gases carried in bulk: reg 2(1). 'In bulk', except in the context of roll-on roll-off cargo spaces, means directly and without intermediate form of containment in a hold, tank or cargo space forming a structural part of, or permanently attached to, a ship; and 'cargo space' means any space in the ship appropriated for the carriage of cargo: reg 2(1). 'Roll-on roll-off cargo spaces' means spaces not normally subdivided in any way and extending to either a substantial length or the entire length of the ship in which the goods (packaged or in bulk, in or on rail or road cars, vehicles (including road or rail tankers), trailers, containers, pallets, demountable tanks or in or on similar stowage units or other receptacles) can be loaded and unloaded normally in a horizontal direction; and 'container' means an article of transport equipment as defined in the International Convention for Safe Containers (Geneva, 2 December 1972; TS 40 (1979); Cmnd 7535) (CSC 1972) (as to which see PARA 8), published by the International Maritime Organisation ('IMO'): Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1). As to the International Maritime Organisation see PARA 13.

The Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, apply to the carriage of all cargoes, but are subject to any requirements contained in the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367 (as to which see PARA 657), in respect of the carriage of dangerous goods and marine pollutants (as defined in those regulations); and where any requirement in those regulations regulates an aspect of carriage provided for in the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, apply to that extent, and not the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336: reg 3(2). As to exemptions see PARA 665.

2 The cargo information referred to in the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(1)(a) must include:

- 940 (1) in the case of general cargo and cargo carried in cargo units, a general description of the cargo, the gross mass of the cargo or cargo units and any relevant special properties of the cargo (reg 4(1)(b)(i));
- 941 (2) in the case of bulk cargoes, information on the stowage factor of the cargo, the trimming procedures, the likelihood of shifting including angle of repose, if applicable, and any other relevant special properties; and, in the case of a concentrate or other cargo which may liquefy, additional information in the form of a certificate indicating the moisture content of the cargo and its transportable moisture limit (reg 4(1)(b)(ii));
- 942 (3) in the case of bulk cargoes which are not classified in accordance with the SOLAS Convention reg VII/2, but have chemical properties that may create a potential hazard, information on the chemical properties in addition to that required by head (2) (reg 4(1)(b)(iii)).

For these purposes, 'cargo unit' includes a cargo transport unit and means wheeled cargo, vehicle, container, flat, pallet, portable tank, packaged unit, or any other cargo, and loading equipment, or any part thereof, which belongs to the ship and which is not fixed to the ship; reg 2(1). 'Bulk cargo' means cargo carried in bulk; 'trimming' means any levelling of the material within a cargo space, either partial or total, by means of loading spouts or chutes, portable machinery, equipment or manual labour; 'cargoes which may liquefy' means cargoes which are subject to moisture migration and subsequent liquefaction if shipped with a moisture content in excess of the transportable moisture limit; 'moisture content' means the amount of moisture present in a particular sample expressed as a percentage by weight of the total wet weight of the sample; 'transportable moisture limit' means nine-tenths of the flow moisture point; 'flow moisture point' means the percentage moisture content (wet weight basis) at which a flow state develops under the methods of test in a representative sample of the material as prescribed by the Code of Safe Practice for Solid Bulk Cargoes (BC Code), published by the IMO; and 'flow state' means the condition when a mass of granular material is saturated with liquid to an extent that under prevailing external forces such as vibration, impactation or ship's motion, it loses its internal shear strength and behaves as a liquid: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1). Any reference to a Code includes a reference to any document amending it which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(3). For these purposes, 'Merchant Shipping Notice' means a Notice described as such, issued by the Department of Transport: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1). Any reference to a Merchant Shipping Notice includes a reference to any document amending it which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(3). As to the Secretary of State see PARA 38.

'SOLAS Convention' means the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874), with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277) (as to which see PARA 8): Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1). Any reference to a Convention includes a reference to any document amending it which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(3).

3 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(1)(a). Where a ship is operated by a person other than its owner, (whether on behalf of the owner or some other person, or on his own behalf) a reference to the owner must be construed as including a reference to that person: reg 2(5).

The Secretary of State may require by notice in writing any person carrying on business or trade in the maritime transport sector to furnish, in the specified form and manner and within the specified time, periodical or other returns about cargo, passenger and vessel movement, certain particulars in relation to the transport of containers or ro-ro units, and information in relation to the vessel: see the Statistical Returns (Carriage of Goods and Passengers by Sea) Regulations 1997, SI 1997/2330; and PARA 44.

4 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(1)(a)(i).

- 5 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(1)(a)(ii).
- 6 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(1)(a)(iii).
- 7 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(1)(a)(iv).
- 8 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(2).
- 9 For these purposes, 'forwarder' means a person who receives the appropriate cargo information in preparation for eventual delivery of the cargo to the ship or its agent (and may include a cargo packer or consolidator); and 'appropriate cargo information' means information relevant to the cargo and its stowage and securing, which should specify in particular the precautions necessary for the safe carriage of that cargo by sea: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1).
- 10 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(3).
- 11 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(4).
- 12 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(5).
- 13 le as required by the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4: see reg 4(6).
- 14 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(6); and PARA 1187.
- 15 le as required by the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4: see reg 4(7).
- 16 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(7); and PARA 1187.

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661. Carriage of required documentation.

The owner and master of every ship¹, other than a ship engaged in the carriage of grain², must ensure that appropriate documentation, relevant to the cargo³ and its stowage and securing, which should specify in particular the precautions necessary for the safe carriage of that cargo by sea, is carried on board⁴.

The owner and master of every ship⁵ carrying grain must ensure that the International Grain Code⁶ is carried on board⁷.

All passenger ships⁸ and cargo ships⁹ carrying cargoes other than solid bulk cargoes¹⁰, except cargo ships of less than 500 tons¹¹ engaged on voyages which are not international voyages, must carry on board a Cargo Securing Manual¹².

An owner or master who contravenes the requirement to carry appropriate documentation¹³, including the requirement to carry the International Grain Code¹⁴, is guilty of an offence¹⁵.

1 le every ship to which the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, apply: see reg 5(1). As to the application of the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, see PARA 660 note 1; and as to references to the owner see PARA 660 note 3.

2 For these purposes, 'grain' includes wheat, maize (corn), oats, rye, barley, rice, pulses, seeds and processed forms thereof whose behaviour is similar to that of grain in its natural state: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1). As to the carriage of grain generally see PARA 668.

3 As to the meaning of 'cargo' for these purposes see PARA 660 note 1.

4 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 5(1). Such documentation may consist of one or more of the following Codes of Safe Practice:

943 (1) the Code of Safe Practice for Cargo Stowage and Securing adopted by the Organization by Resolution A.714(17) (1992 edition) (as amended in 1994 and 1995) (Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 5(2)(a));

944 (2) the Code of Safe Practice for Ships Carrying Timber Deck Cargoes adopted by the Organization by Resolution A.715(17) (1992 edition) (Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 5(2)(b)); and

945 (3) the Code of Safe Practice for Solid Bulk Cargoes (BC Code) adopted by the Organisation by Resolution A.434(XI) (1991 edition) (as amended in 1996) (Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 5(2)(c)).

As to references made to Codes see PARA 660 note 2. As to exemptions see PARA 665.

5 le every ship to which the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, apply: see reg 5(3).

6 For these purposes, 'International Grain Code' means the International Code for the Safe Carriage of Grain in Bulk adopted by the Maritime Safety Committee of the International Maritime Organisation ('IMO') by resolution MSC 23(59) on 23 May 1991: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1). As to the International Maritime Organisation see PARA 13.

In interpreting the International Grain Code, the requirements having been made mandatory under the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11 (as to which see PARA 668) the

language thereof must be construed accordingly, the definitions set out in the Code apply, and references to the Administration are, in relation to United Kingdom ships, references to the Secretary of State, and references to the contracting government of the port of loading, in relation to all ships loading in the United Kingdom, are references to the Secretary of State: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(6). As to the Secretary of State see PARA 38.

7 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 5(3).

8 For these purposes, 'passenger ship' means a ship carrying more than 12 passengers: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1).

9 For these purposes, 'cargo ship' means a ship which is not a passenger ship, troop ship, pleasure vessel or fishing vessel, where 'pleasure vessel' has the same meaning as in the Merchant Shipping (Cargo Ship Construction) Regulations 1997, SI 1997/1509 (as to which generally see PARA 599): Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1).

10 As to the meaning of 'bulk cargo' for these purposes see PARA 660 note 2.

11 For these purposes, 'tons' means gross tons: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1).

12 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 5(4). 'Cargo Securing Manual' means a manual drawn up to the standard contained in the Maritime Safety Committee Circular of the IMO, MSC/Circ 745 (dated 13 June 1996), and approved, in the case of United Kingdom ships by the Secretary of State, or in the case of other ships by or on behalf of the flag state, where 'flag state' in relation to a ship means the state in which the ship is registered or, if unregistered, whose flag it is entitled to fly: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1).

13 *le* who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 5(1) (see the text and notes 1-4): see reg 5(5).

14 *le* who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 5(3) (see the text and notes 5-7): see reg 5(5).

15 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 5(5); and PARA 1187.

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662. Duties regarding stowage and securing.

The owner¹ and master must ensure that²:

- 710 (1) cargo³ and cargo units⁴ carried on or under deck are loaded, stowed and secured so as to prevent as far as is practicable, throughout the voyage, damage or hazard to the ship and the persons on board, and loss of cargo overboard⁵;
- 711 (2) appropriate precautions are taken during loading and transport of heavy cargoes or cargoes with abnormal physical dimensions to ensure that no structural damage to the ship occurs and to maintain adequate stability throughout the voyage⁶;
- 712 (3) appropriate precautions are taken during loading and transport of cargo units on board ro-ro ships, especially with regard to the securing arrangements on board such ships and on the cargo units and with regard to the strength of the securing points and lashings⁷; and
- 713 (4) cargo on board all passenger ships⁸ and cargo ships⁹ carrying cargoes other than solid bulk cargoes¹⁰ (except cargo ships of less than 500 tons¹¹ engaged on voyages which are not international voyages)¹² is stowed and secured throughout any voyage in accordance with the Cargo Securing Manual¹³; and
- 714 (5) cargo on board all such ships as are mentioned in head (4) above¹⁴ with roll-on/roll-off cargo spaces¹⁵, must be stowed and secured in accordance with the Cargo Securing Manual before the ship leaves a berth¹⁶.

Where packaged goods have been packed into or onto a cargo unit, the shipper¹⁷ or forwarder¹⁸ of such goods must ensure that¹⁹:

- 715 (a) the cargo is packed and secured so as to prevent, throughout any voyage, damage or hazard to the ship and the persons on board²⁰; and
- 716 (b) if the cargo unit is a container²¹, it is not loaded to more than the maximum gross weight indicated on the Safety Approval Plate attached to the container in accordance with the International Convention for Safe Containers ('CSC') 1972²².

An owner or master who contravenes the requirements of heads (1) to (5) above²³ is guilty of an offence²⁴; and a shipper or forwarder who contravenes the requirements of head (a) or head (b) above²⁵ is guilty of an offence²⁶.

1 As to references to the owner see PARA 660 note 3.

2 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(1). As to equivalents and exemptions see PARA 665.

3 As to the meaning of 'cargo' for these purposes see PARA 660 note 1.

4 As to the meaning of 'cargo unit' for these purposes see PARA 660 note 2.

5 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(1)(a).

6 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(1)(b).

- 7 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(1)(c).
- 8 As to the meaning of 'passenger ship' see PARA 661 note 8.
- 9 As to the meaning of 'cargo ship' see PARA 661 note 9.
- 10 As to the meaning of 'bulk cargo' see PARA 660 note 2.
- 11 As to the meaning of 'tons' see PARA 661 note 11.
- 12 Ie all ships to which the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 5(4) (see PARA 661) is applicable: see reg 6(1)(d).
- 13 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(1)(d). As to the meaning of 'Cargo Securing Manual' see PARA 661 note 12.
- 14 Ie all ships to which the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 5(4) (see PARA 661) is applicable: see reg 6(1)(e).
- 15 As to the meaning of 'roll-on/roll-off cargo spaces' see PARA 660 note 1.
- 16 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(1)(e).
- 17 As to the meaning of 'shipper' see PARA 660 note 1.
- 18 As to the meaning of 'forwarder' see PARA 660 note 9.
- 19 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(2).
- 20 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(2)(a).
- 21 As to the meaning of 'container' see PARA 660 note 1.
- 22 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(2)(b). The text refers to the International Convention for Safe Containers (Geneva, 2 December 1972; TS 40 (1979); Cmnd 7535) (CSC 1972) (as to which see PARA 8), published by the International Maritime Organisation ('IMO'): see the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(2)(b). As to the International Maritime Organisation see PARA 13.
- 23 Ie an owner or master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(1) (see the text and notes 1-16): see reg 6(3)(a).
- 24 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(3)(a); and PARA 1187.
- 25 Ie a shipper or forwarder who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(2) (see the text and notes 17-22): see reg 6(3)(b).
- 26 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(3)(b); and PARA 1187.

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663. Requirement for oxygen analysis and gas detection equipment.

In the case of a ship transporting or accepting for transport a bulk cargo¹ which is liable to emit a toxic or flammable gas, or cause oxygen depletion in the cargo hold², an appropriate instrument for measuring the concentration of gas or oxygen in the air must be provided together with detailed instructions for its use³. Such an instrument must be of a type approved by a certifying authority⁴, and the crew are to be trained in its use⁵.

An owner⁶ of a ship which transports, or a master who accepts for carriage, such a bulk cargo without ensuring that this requirement for oxygen analysis and gas detection equipment has been complied with⁷ is guilty of an offence⁸.

1 As to the meaning of 'bulk cargo' see PARA 660 note 2; and as to the meaning of 'cargo' for these purposes see PARA 660 note 1.

2 For these purposes, 'cargo hold' means any hold in the ship appropriated for the carriage of cargo: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1).

3 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 7(1). As to equivalents and exemptions see PARA 665.

4 For these purposes, 'Certifying Authority' means the Secretary of State or any other person or organisation authorised by the Secretary of State: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1). As to the Secretary of State see PARA 38. Any approval given pursuant to the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, must be given in writing and must specify the date when it is to come into force and the conditions (if any) on which it is given: reg 2(4).

5 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 7(1).

6 As to references to the owner see PARA 660 note 3.

7 I.e. an owner who fails to ensure that the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 7(1) (see the text and notes 1-5) has been complied with: see reg 7(2).

8 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 7(2); and PARA 1187.

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664. Safe use of pesticides in ships.

Where pesticides are used in cargo spaces¹, they must be used in accordance with the appropriate Merchant Shipping Notice².

If this requirement as to the safe use of pesticides in ships is not complied with³, the owner⁴ and master are each guilty of an offence⁵.

1 As to the meaning of 'cargo space' see PARA 660 note 1.

2 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 8(1). The text refers to Merchant Shipping Notice 1718(M) ('The Safe Use of Pesticides in Ships'): see the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 8(1). As to the meaning of 'Merchant Shipping Notice' see PARA 660 note 2. The stated purpose of Merchant Shipping Notice 1718(M) is to specify: the requirements for the safe use of pesticides in cargo spaces on board ships when loaded or intended to be loaded with any cargo, with the exception of liquids in bulk or gases in bulk; and the relevant aspects of the International Maritime Organisation ('IMO') Recommendations on the Safe Use of Pesticides in Ships which are mandatory for these purposes. As to the International Maritime Organisation see PARA 13. As to equivalents and exemptions see PARA 665.

3 Ie if the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 8(1) (see the text and notes 1-2) has not been complied with: see reg 8(2).

4 As to references to the owner see PARA 660 note 3.

5 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 8(2); and PARA 1187.

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665. Power to provide for equivalents and exemptions.

Where there is a requirement¹ that a particular piece of equipment (or type thereof) is to be provided or carried in a ship (or that any particular provision is to be made) the certifying authority² may permit any other piece of equipment to be provided or carried (or any other provisions to be made in that ship) if he is satisfied by trials thereof or otherwise that such other piece of equipment or provision is at least as effective as that otherwise³ required⁴. For these purposes, the results of verification and tests carried out by bodies or laboratories of other member states of the International Maritime Organisation⁵ offering suitable and satisfactory guarantees of technical and professional competence and independence must be accepted⁶.

The Secretary of State⁷ may exempt any ship from all or any of the provisions relating to the carriage of cargoes⁸ as may be specified in the exemption on such terms, if any, as he may specify and, on giving reasonable notice, he may also alter or cancel such an exemption⁹.

1 Ie in the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, or in documentation referred to therein (see PARAS 660 et seq, 666 et seq): see reg 15(1).

2 As to the meaning of 'certifying authority' see PARA 663 note 4.

3 Ie otherwise required by the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, or information referred to therein: see reg 15(1).

4 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 15(1).

5 As to the International Maritime Organisation see PARA 13.

6 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 15(2).

7 As to the Secretary of State see PARA 38.

8 Ie from all or any of the provisions of the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336 (see PARAS 660 et seq, 666 et seq): see reg 15(3).

9 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 15(3).

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B. BULK CARGOES OTHER THAN GRAIN

666. Conditions to be met before bulk cargoes other than grain are loaded.

Prior to loading a bulk cargo¹, the master must be in possession of stability information², containing comprehensive information on the ship's stability and on the distribution of cargo and ballast for the standard loading conditions³.

The master must not accept for loading concentrates or other cargoes which may liquefy⁴ unless⁵:

- 717 (1) either the moisture content⁶ of the cargo indicated in the certificate (which indicates both the moisture content of the cargo and its transportable moisture limit)⁷ is less than its transportable moisture limit⁸; or
- 718 (2) if the moisture content is above that limit, appropriate safety arrangements are made to the satisfaction of the certifying authority⁹ to ensure adequate stability in the case of cargo shifting, and the ship has adequate structural integrity¹⁰.

Prior to loading a bulk cargo which is not classified in accordance with the SOLAS Convention¹¹, but which has chemical properties that may create a potential hazard¹², appropriate special precautions for its safe carriage must be taken¹³.

The owner¹⁴ must ensure that the master is furnished with the stability information¹⁵; and the master must not accept cargo for loading unless:

- 719 (a) he has in his possession the stability information¹⁶;
- 720 (b) he is satisfied by calculations that the proposed loading arrangements would ensure sufficient stability in accordance with the stability information so provided¹⁷; and
- 721 (c) he is satisfied that, in the case of a bulk cargo which is not classified in accordance with the SOLAS Convention¹⁸, but which has chemical properties that may create a potential hazard¹⁹, the appropriate special precautions for its safe carriage that are required²⁰ have been taken²¹.

An owner who contravenes the requirement to ensure that the master is furnished with the stability information²² is guilty of an offence²³; and a master who contravenes the conditions for accepting for loading concentrates or other cargoes which may liquefy²⁴ or who contravenes the conditions for accepting cargo which are set out in heads (a) to (c) above²⁵ is guilty of an offence²⁶.

1 As to the meaning of 'bulk cargo' see PARA 660 note 2; and as to the meaning of 'cargo' for these purposes see PARA 660 note 1.

2 The information provided pursuant to the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32 (as to which see PARA 682): see the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(1).

- 3 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(1). As to equivalents and exemptions see PARA 665.
- 4 As to the meaning of 'cargoes which may liquefy' see PARA 660 note 2.
- 5 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(2).
- 6 As to the meaning of 'moisture content' for these purposes see PARA 660 note 2.
- 7 Is the certificate mentioned in the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(1)(b) (see PARA 660): see reg 9(2)(i). As to the meaning of 'transportable moisture limit' for these purposes see PARA 660 note 2.
- 8 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(2)(i).
- 9 As to the meaning of 'certifying authority' for these purposes see PARA 663 note 4.
- 10 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(2)(ii).
- 11 Is not classified in accordance with the SOLAS Convention reg VII/2: see the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(3). As to the meaning of 'SOLAS Convention' see PARA 660 note 2.
- 12 Is a bulk cargo referred to in the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(1)(b)(iii) (see PARA 660): see reg 9(3).
- 13 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(3).
- 14 As to references to the owner see PARA 660 note 3.
- 15 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(4). The text refers to the stability information referred to in reg 9(1) (see the text and notes 1-3): see reg 9(4).
- 16 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(5)(a). The text refers to the stability information referred to in reg 9(1) (see the text and notes 1-3): see reg 9(5)(a).
- 17 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(5)(b). The text refers to the stability information provided under reg 9(1) (see the text and notes 1-3): see reg 9(5)(b).
- 18 Is not classified in accordance with the SOLAS Convention reg VII/2: see the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(5)(c).
- 19 Is a bulk cargo referred to in the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(1)(b)(iii) (see PARA 660): see reg 9(5)(c).
- 20 Is required by the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(3) (see the text and notes 11-13): see reg 9(5)(c).
- 21 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(5)(c).
- 22 Is an owner who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(4) (see the text and notes 14-15): see reg 9(6).
- 23 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(6); and PARA 1187.
- 24 Is a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(2) (see the text and notes 4-10): see reg 9(7).
- 25 Is a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(5) (see the text and notes 16-21): see reg 9(7).
- 26 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(7); and PARA 1187.

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667. Loading, unloading and stowage of bulk cargoes.

To enable the master to prevent excessive stresses in the ship's structure, it is the duty of the owner¹ to ensure the ship is provided with a cargo loading manual, which must be written in a language with which the ship's officers responsible for cargo operations are familiar². If this language is not English, the ship must be provided with a manual written also in the English language³. The manual may consist of one or more booklets and must, as a minimum, include⁴:

- 722 (1) stability data⁵;
- 723 (2) ballasting and deballasting rates and capacities⁶;
- 724 (3) maximum allowable load per unit surface area of the tank top plating⁷;
- 725 (4) maximum allowable load per hold⁸;
- 726 (5) general loading and unloading instructions with regard to the strength of the ship's structure including any limitations on the most adverse operating conditions during loading, unloading, ballasting operations and the voyage⁹;
- 727 (6) any special restrictions such as limitations on the most adverse operating conditions imposed by the administration¹⁰ (or organisation recognised by it, if applicable)¹¹; and
- 728 (7) where strength calculations are required, maximum permissible forces and moments on the ship's hull during loading, unloading and the voyage¹².

Before a solid bulk cargo¹³ is loaded or unloaded, the master and the terminal representative¹⁴ must agree on a plan which:

- 729 (a) ensures that the permissible forces and moments on the ship are not exceeded during loading or unloading¹⁵; and
- 730 (b) includes the sequence, quantity and rate of loading or unloading¹⁶,

taking into consideration the intended speed of loading or unloading, intended number of pours and the deballasting or ballasting capability of the ship¹⁷. The plan and any subsequent amendments thereto must be lodged with the appropriate authority of the port state¹⁸. The master and terminal representative must ensure that loading and unloading operations are conducted in accordance with the plan so agreed¹⁹.

It is the duty of the master to ensure that:

- 731 (i) bulk cargoes are loaded and trimmed²⁰ reasonably level, as necessary, to the boundaries of the cargo space²¹ so as to minimize the risk of shifting and to ensure that adequate stability will be maintained throughout the voyage²²;
- 732 (ii) when bulk cargoes are carried in 'tween-decks, the hatchways of such 'tween-decks are closed in those cases where the loading information indicates an unacceptable level of stress of the bottom structure if the hatchways are left open²³;
- 733 (iii) the cargo is trimmed reasonably level and either extends from side to side or is secured by additional longitudinal divisions of sufficient strength²⁴;

- 734 (iv) the safe load-carrying capacity of the 'tween-decks is observed to ensure that the deck-structure is not overloaded²⁵.

If during loading or unloading any of the limits of the ship referred to in heads (1) to (7) above²⁶ are exceeded or are likely to become so if the loading or unloading continues, the master has the right to suspend operation, and if he does so he must notify accordingly the appropriate authority of the port state with which the plan has been lodged²⁷; and, where these circumstances apply²⁸, the master and the terminal representative must ensure that corrective action is taken²⁹.

When unloading cargo, the master and terminal representative must ensure that the unloading method does not damage the ship's structure³⁰.

The master must ensure that ship's personnel continuously monitor cargo operations³¹.

Where possible, the ship's draught must be checked regularly during loading or unloading to confirm the tonnage figures supplied³²; and each draught and tonnage observation must be recorded in a cargo log-book³³.

If significant deviations from the plan agreed for loading or unloading³⁴ are detected, cargo or ballast operations (or both) must be adjusted to ensure that the deviations are corrected³⁵.

An owner who contravenes the duty to ensure the ship is provided with a cargo loading manual³⁶ is guilty of an offence³⁷.

A master who contravenes the provisions which require a plan for loading or unloading the ship to be agreed³⁸, or who fails to ensure that loading and unloading operations are conducted in accordance with the plan so agreed³⁹, or who fails to ensure that cargoes are loaded and trimmed as necessary⁴⁰, or who fails to ensure that corrective action is taken where, during loading or unloading, any of the ship's limits⁴¹ are exceeded or are likely to become so⁴², or who fails to ensure that the unloading method does not damage the ship's structure⁴³, or who fails to monitor cargo operations as required or fails to ensure that deviations from the plan agreed for loading or unloading are corrected⁴⁴, is guilty of an offence⁴⁵.

A terminal representative in the United Kingdom who contravenes the provisions which require a plan for loading or unloading the ship to be agreed⁴⁶, or who fails to ensure that loading and unloading operations are conducted in accordance with the plan so agreed⁴⁷, or who fails to ensure that corrective action is taken where, during loading or unloading, any of the ship's limits⁴⁸ are exceeded or are likely to become so⁴⁹, or who fails to ensure that the unloading method does not damage the ship's structure⁵⁰, is guilty of an offence⁵¹.

1 As to references to the owner see PARA 660 note 3.

2 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2). As to equivalents and exemptions see PARA 665.

3 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2).

4 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2).

5 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2)(a). Head (1) in the text refers to stability data, to the extent required by the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32 (as to which see PARA 682): see the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2)(a).

6 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2)(b).

7 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2)(c).

8 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2)(d).

- 9 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2)(e).
- 10 'Administration', in relation to United Kingdom ships, means the Secretary of State: Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 2(1). As to the Secretary of State see PARA 38.
- 11 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2)(f).
- 12 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2)(g).
- 13 As to the meaning of 'bulk cargo' see PARA 660 note 2; and as to the meaning of 'cargo' for these purposes see PARA 660 note 1.
- 14 For the purposes of the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10, 'terminal representative' means an individual who represents the terminal or other facility where the ship is loading or unloading and who has responsibility for operations conducted by that terminal or facility with regard to the particular ship: reg 10(1)(a). For these purposes, 'terminal' means any terminal, jetty, pier, floating structure or other works within a harbour at which ships can obtain shelter or ship and unship goods or passengers: reg 2(1).
- 15 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(3)(i).
- 16 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(3)(ii).
- 17 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(3).
- 18 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(3). For the purposes of reg 10(3) and reg 10(7) (as to which see the text and notes 26-30), the appropriate authority of a port in the United Kingdom is the harbour authority of that port; and if a terminal in the port is not operated by the harbour authority, then the operator of the terminal is the appropriate authority: reg 10(1)(b). 'Operator of the terminal' means the person under whose control the activities at the terminal are: reg 2(1). As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 19 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(6).
- 20 As to the meaning of 'trimming' for these purposes see PARA 660 note 2.
- 21 As to the meaning of 'cargo space' see PARA 660 note 1.
- 22 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(4).
- 23 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(5)(a).
- 24 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(5)(b).
- 25 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(5)(c).
- 26 In the limits of the ship referred to in the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2) (see the text and notes 1-12): see reg 10(7)(a).
- 27 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(7)(a). As to the meaning of 'appropriate authority' for these purposes see note 18.
- 28 In where the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(7)(a) (see the text and notes 26-27) applies: see reg 10(7)(b).
- 29 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(7)(b).
- 30 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(7)(c).
- 31 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(8)(a).
- 32 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(8)(b).
- 33 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(8)(c).
- 34 In the plan agreed under the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(3) (see the text and notes 13-18): see reg 10(8)(d).

- 35 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(8)(d).
- 36 Is an owner who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2) (see the text and notes 1-12): see reg 10(9)(a).
- 37 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(9)(a); and PARA 1187.
- 38 Is a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(3) (see the text and notes 13-18): see reg 10(9)(b).
- 39 Is a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(6) (see the text and note 19): see reg 10(9)(b).
- 40 Is a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(4), (5) (see the text and notes 20-25): see reg 10(9)(b).
- 41 Is the limits of the ship referred to in the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2) (see the text and notes 1-12): see reg 10(7)(a).
- 42 Is a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(7)(b) (see the text and notes 28-29): see reg 10(9)(b).
- 43 Is a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(7)(c) (see the text and note 30): see reg 10(9)(b).
- 44 Is a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(8) (see the text and notes 31-35): see reg 10(9)(b).
- 45 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(9)(b); and PARA 1187.
- 46 Is a terminal representative in the United Kingdom who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(3) (see the text and notes 13-18): see reg 10(9)(c).
- 47 Is a terminal representative in the United Kingdom who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(6) (see the text and note 19): see reg 10(9)(c).
- 48 Is the limits of the ship referred to in the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2) (see the text and notes 1-12): see reg 10(7)(a).
- 49 Is a terminal representative in the United Kingdom who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(7)(b) (see the text and notes 28-29): see reg 10(9)(c).
- 50 Is a terminal representative in the United Kingdom who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(7)(c) (see the text and note 30): see reg 10(9)(c).
- 51 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(9)(c); and PARA 1187.

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C. CARGO SHIPS CARRYING GRAIN

668. Ships carrying grain to comply with the International Grain Code.

A ship carrying grain¹ must comply with the requirements of the International Grain Code².

The owner³ and master must ensure⁴ that:

- 735 (1) a ship loading grain complies with the International Grain Code⁵; and
- 736 (2) subject to head (b) below, the ship has on board a document of authorisation as required by that Code⁶.

Except when a ship may be in distress, the owner and master must not permit a ship loaded with grain in bulk outside the United Kingdom⁷ to enter any port in the United Kingdom so laden, unless the ship has been loaded in accordance with the International Grain Code⁸.

No person may order the commencement of the loading of grain into a ship in the United Kingdom unless he is satisfied that⁹:

- 737 (a) the ship has on board a document of authorisation referred to in head (2) above¹⁰; or
- 738 (b) the master has demonstrated to the satisfaction of the certifying authority that the ship will, in its proposed loading condition, comply with the appropriate requirements of the International Grain Code and has obtained a document to this effect signed by a surveyor of such a certifying authority¹¹.

An owner or master who fails to ensure that a ship loading grain complies with the International Grain Code and has on board a document of authorisation as required by that Code¹², or who permits a ship loaded in contravention of the International Grain Code outside the United Kingdom to enter any port in the United Kingdom so laden¹³, is guilty of an offence¹⁴.

A person who orders the commencement of the loading of grain into a ship in the United Kingdom without satisfying himself first as to the conditions so required (as set out in heads (a) and (b) above)¹⁵ is guilty of an offence¹⁶.

1 As to the meaning of 'grain' see PARA 661 note 2.

2 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(1). As to the meaning of 'International Grain Code' see PARA 661 note 6. As to equivalents and exemptions see PARA 665.

3 As to references to the owner see PARA 660 note 3.

4 ie without prejudice to the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(1) (see the text and notes 1-2) or any other requirement of the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336: see reg 11(2).

5 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(2)(a).

- 6 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(2)(b). In the case of a United Kingdom ship, the document of authorisation must be issued by the certifying authority: see reg 11(2)(b). As to the meaning of 'certifying authority' see PARA 663 note 4.
- 7 As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 8 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(3).
- 9 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(4).
- 10 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(4)(a).
- 11 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(4)(b).
- 12 Is an owner or master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(2) (see the text and notes 3-6): see reg 11(5).
- 13 Is an owner or master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(3) (see the text and notes 7-8): see reg 11(5).
- 14 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(5); and PARA 1187.
- 15 Is a person who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(4) (see the text and notes 9-11): see reg 11(6).
- 16 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(6); and PARA 1187.

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(vii) Special Provision for Ships receiving Transhipped Fish

669. Requirements to be met by ships in respect of which transhipment licences are in force.

The Secretary of State¹ may, for all or any of the following purposes², that is to say:

- 739 (1) the purpose of securing the safety of ships³ in respect of which transhipment licences⁴ are in force and persons on them⁵;
- 740 (2) the purpose of protecting the health of persons on such ships⁶;
- 741 (3) the purpose of securing the safety of any other persons or property⁷; and
- 742 (4) the purpose of preventing or reducing pollution⁸,

by regulations⁹ prescribe requirements to be met by ships in respect of which transhipment licences are in force¹⁰. The matters with respect to which requirements may be so prescribed include, in particular, the construction and equipment of ships, the manning of ships and operational matters¹¹; and such regulations may¹² apply in relation to a ship in respect of which a transhipment licence is in force any requirements contained in safety regulations¹³, regulations relating to pollution¹⁴, or any international agreement¹⁵, whether or not those requirements would otherwise apply in relation to that ship¹⁶.

1 As to the Secretary of State see PARA 38.

2 See the Merchant Shipping Act 1995 s 100F(1) (ss 100F, 100G added by the Merchant Shipping and Maritime Security Act 1997 s 11).

3 As to the meaning of 'ship' see PARA 229.

4 For these purposes, 'transhipment licence' means a licence under the Sea Fish (Conservation) Act 1967 s 4A (prohibition of transhipment of fish unless authorised by a licence) (see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 986): Merchant Shipping Act 1995 s 100F(1) (as added: see note 2).

5 Merchant Shipping Act 1995 s 100F(3)(a) (as added: see note 2).

6 Merchant Shipping Act 1995 s 100F(3)(b) (as added: see note 2).

7 Merchant Shipping Act 1995 s 100F(3)(c) (as added: see note 2).

8 Merchant Shipping Act 1995 s 100F(3)(d) (as added: see note 2).

9 As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41. At the date at which this volume states the law, no such regulations had been made under s 100F.

10 Merchant Shipping Act 1995 s 100F(2) (as added: see note 2). The obligation imposed by regulations under s 100F(2) is not enforceable except in accordance with s 100G (failure to comply with prescribed standards) (see PARA 670): s 100G(6) (as so added). However, s 100G(6) does not limit the powers conferred by s 258 (power to inspect ships and their equipment etc) (see PARA 48): see s 100G(6) (as so added).

11 Merchant Shipping Act 1995 s 100F(4) (as added: see note 2).

12 le without prejudice to the generality of the Merchant Shipping Act 1995 s 100F(2) (see the text and notes 9-10): see s 100F(5) (as added: see note 2).

13 Merchant Shipping Act 1995 s 100F(5)(a) (as added: see note 2). As to the meaning of 'safety regulations' see PARA 591.

14 Merchant Shipping Act 1995 s 100F(5)(b) (as added: see note 2). The text refers to regulations under s 128 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 360): see s 100F(5)(b) (as so added).

15 Merchant Shipping Act 1995 s 100F(5)(c) (as added: see note 2).

16 Merchant Shipping Act 1995 s 100F(5) (as added: see note 2).

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670. Compliance with standards prescribed for ships in respect of which transhipment licences are in force.

If it appears to the Secretary of State¹ that any requirement of regulations made by him either in relation to ships² in respect of which transhipment licences³ are in force⁴, or in relation to compulsory insurance or security⁵, is being contravened in respect of such a ship⁶, he may serve on the master⁷ a notice⁸, which specifies the contravention by reason of which it is given⁹, and must:

- 743 (1) prohibit the receiving by the ship of fish transhipped from another ship¹⁰;
- 744 (2) prohibit the processing of fish on the ship¹¹; or
- 745 (3) prohibit both such receiving and such processing¹².

The Secretary of State must revoke such a notice if he is satisfied that the contravention specified in it has been remedied¹³.

If a transhipment licence ceases to be in force in respect of a ship to which such a notice relates, the notice is¹⁴ revoked¹⁵.

If without reasonable excuse the master of a ship causes or permits any prohibition imposed by such a notice¹⁶ to be contravened in respect of the ship, he is guilty of an offence¹⁷.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'ship' see PARA 229.

3 As to the meaning of 'transhipment licence' see PARA 669 note 4.

4 I.e. under the Merchant Shipping Act 1995 s 100F(2) (see PARA 669): see s 100G(1) (s 100G added by the Merchant Shipping and Maritime Security Act 1997 s 11). The obligation imposed by regulations under the Merchant Shipping Act 199 s 100F(2) is not enforceable except in accordance with s 100G (failure to comply with prescribed standards): s 100G(6) (as so added). However, s 100G(6) does not limit the powers conferred by s 258 (power to inspect ships and their equipment etc) (see PARA 48): see s 100G(6) (as so added).

5 I.e. under the Merchant Shipping Act 1995 s 192A (see PARA 1066): see s 100G(1) (as added: see note 4). See further the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209; and PARA 1067.

6 I.e. a ship in respect of which a transhipment licence is in force: see the Merchant Shipping Act 1995 s 100G(1) (as added: see note 4).

7 As to the meaning of 'master' see PARA 424.

8 Merchant Shipping Act 1995 s 100G(1) (as added: see note 4).

9 Merchant Shipping Act 1995 s 100G(2) (as added: see note 4).

10 Merchant Shipping Act 1995 s 100G(2)(a) (as added: see note 4).

11 Merchant Shipping Act 1995 s 100G(2)(b) (as added: see note 4).

12 Merchant Shipping Act 1995 s 100G(2)(c) (as added: see note 4).

- 13 Merchant Shipping Act 1995 s 100G(3) (as added: see note 4).
- 14 le by virtue of the Merchant Shipping Act 1995 s 100G(4): see s 100G(4) (as added: see note 4).
- 15 Merchant Shipping Act 1995 s 100G(4) (as added: see note 4).
- 16 le by a notice under the Merchant Shipping Act 1995 s 100G(2) (see the text and notes 9-12): see s 100G(5); and PARA 1188.
- 17 See the Merchant Shipping Act 1995 s 100G(5); and PARA 1188.

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(2) LOAD LINES

(i) In general

671. Application of the load lines provisions.

The provisions relating to load lines¹ apply to United Kingdom ships wherever they may be and to other ships while they are within United Kingdom waters², except:

- 746 (1) ships of war³;
 - 747 (2) ships solely engaged in fishing⁴;
 - 748 (3) pleasure vessels⁵;
 - 749 (4) ships which do not go to sea⁶; and
 - 750 (5) ships under 80 net tons engaged solely in the coasting trade and not carrying cargo⁷ which fall within one of the following classes⁸, namely:
- 39
- 89. (a) tugs or salvage ships⁹;
 - 90. (b) hopper barges or dredgers¹⁰;
 - 91. (c) ships used by or on behalf of: (i) a general or local lighthouse authority¹¹ for the purpose of the authority's functions as such¹²; (ii) a government department for fishery protection purposes, or a local fisheries committee¹³ for the regulation of sea fisheries within its district¹⁴; (iii) a government department for fishery or scientific research¹⁵; or (iv) the Secretary of State for Defence¹⁶ for the purpose of ensuring safety in the use of firing ranges or weapons at sea¹⁷; and
 - 92. (d) ships in respect of which passenger certificates are in force specifying limits beyond which the ship must not ply, and which operate solely within those limits¹⁸.

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1. The Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 4(1). For these purposes, 'load line' means a mark on a ship indicating the maximum depth to which it may be loaded: reg 2(1).

2. Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 4(1). As to exemptions granted under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, see PARA 672. As to the meaning of 'United Kingdom' see PARA 17 note 3.

The Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, do not apply to large or small commercial vessels which have been examined, and in respect of which a certificate has been issued, in accordance with the applicable Code of Practice, or to a vessel which is operating under the phase-in arrangements of the applicable Code of Practice, pursuant to the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771: see PARAS 610, 611.

3. Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 4(1)(a).

4. Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 4(1)(b).

5. Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 4(1)(c). For these purposes, 'pleasure vessel' means:

946 (1) any ship which at the time it is being used is, in the case of a ship wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner or, in the case of a ship owned by a body corporate, used only for sport or

pleasure and on which the persons are employees or officers of the body corporate, or their immediate family or friends; and is on a voyage or excursion for which the owner does not receive money for or in connection with operating the ship or carrying any person, other than as a contribution to the direct expenses of the operation of the ship incurred during the voyage or excursion; or

947 (2) any ship wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of the club or their immediate family; and for the use of which any charges levied are paid into club funds and applied for the general use of the club; and

948 (3) in the case of any ship referred to in head (1) or head (2) no other payments are made by or on behalf of the users of the ship, other than by the owner;

and, for these purposes, 'immediate family' means, in relation to an individual, the spouse or civil partner of the individual, and a relative of the individual or the individual's spouse or civil partner; and 'relative' means brother, sister, ancestor or lineal descendant: reg 2(1) (definition amended by SI 2005/2114).

6 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 4(1)(d). For these purposes, 'sea' does not include Category A, B, C or D waters, where 'Category A, B, C or D waters' means the waters specified as such in Merchant Shipping Notice 1776(M): Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1). 'Merchant Shipping Notice' means a Notice described as such and issued by the Maritime and Coastguard Agency, and any reference to a particular Merchant Shipping Notice includes a reference to any Merchant Shipping Notice amending that Notice: reg 2(1). Accordingly, Merchant Shipping Notice 1776(M) (Categorisation of Waters: Notice to Owners, Operators and Masters) (March 2003) is published by the Maritime and Coastguard Agency and categorises United Kingdom waters which are not regarded currently as 'sea' for the purposes of merchant shipping legislation (excepting marine pollution). As to the Maritime and Coastguard Agency see PARA 56.

7 A ship referred to in head (5) in the text falling within the class in head (d) in the text is excepted from the provisions of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, while carrying cargo in accordance with the terms, if any, of the ship's passenger certificate expressly authorising the carriage of cargo: reg 4(3).

8 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 4(1)(e) (amended by SI 2000/1335).

9 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 4(2)(a).

10 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 4(2)(b).

11 As to lighthouse authorities see PARA 1068 et seq.

12 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 4(2)(c)(i).

13 For these purposes, 'local fisheries committee' means a local fisheries committee constituted under the Sea Fisheries Regulation Act 1966 (see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 964 et seq): Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1).

14 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 4(2)(c)(ii).

15 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 4(2)(c)(iii).

16 As to the Secretary of State for Defence see **ARMED FORCES** vol 2(2) (Reissue) PARA 2.

17 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 4(2)(c)(iv).

18 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 4(2)(d). See note 7.

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672. Exemptions from load line rules.

The Secretary of State¹ may exempt from the provisions relating to load lines²:

- 751 (1) any ship which embodies features of a novel kind if the development of those features and their incorporation in ships engaged on international voyages³ might be seriously impeded if the ship had to comply with all the requirements of the provisions relating to load lines⁴;
- 752 (2) any ship plying on international voyages between near neighbouring ports if, in his opinion, the sheltered nature and condition of the voyages make it unreasonable or impracticable to apply the provisions relating to load lines, and if he is satisfied the government of the other country (or, as the case may be, of each of the other countries) concurs in that opinion⁵.

The Secretary of State may also exempt from the provisions a ship which is not a Convention-size⁶ ship or any other ship which does not ply on international voyages⁷.

Where a United Kingdom ship does not normally ply on international voyages but is, in exceptional circumstances, required to undertake a single international voyage, the Secretary of State may exempt the ship while engaged on that voyage⁸.

1 As to the Secretary of State see PARA 38.

2 le exempt from the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241 (see PARAS 671, 673 et seq): reg 5(1). As to the meaning of 'load line' see PARA 671 note 1. Any exemption conferred under reg 5 may be conferred subject to such conditions as the Secretary of State thinks fit; and, where any such exemption is conferred subject to conditions, the exemption is not to have effect unless those conditions are complied with: reg 5(4).

Where a ship is exempted under reg 5(1), an International Load Line Exemption Certificate in the form prescribed by the International Convention on Load Lines (London, 5 April to 4 July 1966; TS 58 (1968); Cmnd 3708), as amended by the 1988 Protocol (Cmnd 4419) Annex III must be issued in respect of the ship by the Secretary of State: reg 12(1) (substituted by SI 2000/1335). Except in so far as the nature or terms of any such exemption require the contrary, the ship must be assigned freeboards in accordance with the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 7 (see PARA 674), the ship is subject to surveys in accordance with reg 8 (see PARA 675), and regs 8-11 (see PARA 675 et seq) apply in relation to the Exemption Certificate as they apply in relation to an appropriate certificate, subject to the substitution, for references in those regulations to an Assigning Authority, of references to the Secretary of State: reg 12(3) (amended by SI 2000/1335). As to the meaning of 'Assigning Authority' see PARA 674 note 1. For these purposes, 'Exemption Certificate' means an International Load Line Exemption Certificate or a United Kingdom Load Line Exemption Certificate: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1) (definition added by SI 2000/1335). 'International Load Line Exemption Certificate' means an International Load Line Exemption Certificate issued under the International Convention on Load Lines (London, 5 April to 4 July 1966; TS 58 (1968); Cmnd 3708) (the '1966 Convention'), as amended by the 1988 Protocol (Cmnd 4419): Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1) (definition added by SI 2000/1335). 'United Kingdom Load Line Exemption Certificate' means a certificate issued pursuant to the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 12(2) (see PARA 672 note 7): reg 2(1) (definition added by SI 2000/1335).

Any reference in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, to the 1966 Convention includes any amendment of it considered by the Secretary of State to be relevant from time to time, and specified in a Merchant Shipping Notice: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(3). As to the meaning of 'Merchant Shipping Notice' see PARA 671 note 6. As to the International Convention on Load Lines 1966 see PARA 8.

3 For these purposes, 'international voyage' means a voyage either between a port in the United Kingdom and a port outside the United Kingdom, or between a port in a Convention country (other than the United Kingdom) and a port in any other country or territory (whether a Convention country or not) which is outside the United Kingdom: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1). As to the meaning of 'United Kingdom' see PARA 17 note 3. In determining for these purposes what are the ports between which a voyage is made no account is to be taken of any deviation by a ship from its intended voyage which is solely due to stress of weather or any other circumstance which neither the master nor the owner or the charterer (if any) of the ship could have prevented or forestalled: reg 2(2). For these purposes, 'Convention country' means a country or territory which is either a country the government of which is party to the International Convention on Load Lines (London, 5 April to 4 July 1966; TS 58 (1968); Cmnd 3708) (the '1966 Convention'), or to the 1966 Convention as amended by the 1988 Protocol (Cmnd 4419), or a territory to which the 1966 Convention, or the 1966 Convention as amended by the 1988 Protocol, extends: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1) (definition amended by SI 2000/1335). The list of Convention countries was previously contained in the Merchant Shipping (Load Lines Convention) (Various Countries) Order 1977, SI 1977/1875, and the Merchant Shipping (Load Lines Convention) (Countries) Order 1981, SI 1981/236 (both now revoked and not replaced).

4 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 5(1)(a). See note 2.

5 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 5(1)(b). See note 2.

6 For these purposes, 'Convention-size' in relation to a ship, means in the case of an existing ship, of not less than 150 gross tons (ascertained in accordance with the law in force on 21 July 1968) and in the case of a new ship, of not less than 24 metres in length; 'new ship' means a ship whose keel is laid (or which is at a similar stage of construction) on or after the material date; and 'existing ship' means a ship which is not a new ship: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1). 'Material date' for the purposes of the definitions of a 'new' and an 'existing' ship is, in relation to a ship whose parent country is a Convention country other than the United Kingdom, the date on which the 1966 Convention entered into force for that country and, in relation to any other ship, 21 July 1968: reg 2(1). 'Parent country', in relation to a ship, means the country or territory in which the ship is registered or, if the ship is not registered anywhere, it means the country or territory whose flag the ship flies: reg 2(1).

'Length' ('L'), in relation to a ship means the greater of the following distances:

949 (1) 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the top of the keel; or

950 (2) the length from the fore-side of the stern to the axis of the rudder stock on that waterline;

and where the stem contour is concave above the waterline at 85% of the least moulded depth, both the forward terminal of the total length and the fore-side of the stem respectively must be taken at the vertical projection to that waterline of the aftermost point of the stem contour above that waterline; in ships designed with a rake of keel, the waterline on which this length is measured must be parallel to the designed waterline: reg 2(1) (definition substituted by SI 2000/1335). As to the meanings of 'moulded depth' and 'rake of keel' for these purposes see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1).

7 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 5(2). See note 2. Where a ship is exempted under reg 5(2), a United Kingdom Load Line Exemption Certificate must be issued in respect of the ship by the Secretary of State which must state the conditions with which the ship is to comply, and which must be in the form prescribed in Merchant Shipping Notice 1752(M) Sch 8 (United Kingdom Load Line Certificates): Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 12(2) (amended by SI 2000/1335). Except in so far as the nature or terms of any such exemption require the contrary, the ship must be assigned freeboards in accordance with the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 7 (see PARA 674), the ship is subject to surveys in accordance with reg 8 (see PARA 675), and regs 8-11 (see PARA 675 et seq) apply in relation to the Exemption Certificate as they apply in relation to an appropriate certificate, subject to the substitution, for references in those regulations to an Assigning Authority, of references to the Secretary of State: reg 12(3) (as amended: see note 2).

8 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 5(3). See note 2. Where a ship is exempted under reg 5(3), an International Load Line Exemption Certificate in the form prescribed by the International Convention on Load Lines (London, 5 April to 4 July 1966; TS 58 (1968); Cmnd 3708), as amended by the 1988 Protocol (Cmnd 4419) must be issued in respect of the ship by the Secretary of State: reg 12(1) (as substituted: see note 2). Except in so far as the nature or terms of any such exemption require the contrary, the ship must be assigned freeboards in accordance with the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 7 (see PARA 674), is subject to surveys in accordance with reg 8 (see PARA 675), and regs 8-11 (see PARA 675 et seq) apply in relation to the Exemption Certificate as they apply in relation to an appropriate certificate, subject to the substitution, for references in those regulations to an Assigning Authority, of references to the Secretary of State: reg 12(3) (as amended: see note 2).

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673. General compliance with load line rules.

Subject to any exemption conferred under the provisions relating to load lines¹, a ship must not proceed, or attempt to proceed, to sea² unless:

- 753 (1) it has been surveyed in accordance with the load lines rules³;
- 754 (2) it is marked with the appropriate marks⁴;
- 755 (3) it complies with the conditions of assignment applicable to it⁵; and
- 756 (4) information as to the stability of the ship⁶, or as to the loading and ballasting of any ship of more than 150 metres in length⁷, is provided for the guidance of the master of the ship⁸.

However, this requirement does not apply to a non-United Kingdom ship⁹ in respect of which a valid Convention certificate¹⁰ is produced¹¹.

A ship must not be so loaded that if the ship is in salt water and has no list the appropriate load line on each side of the ship is submerged¹² or, in any other case, so that the appropriate load line on each side of the ship would be submerged if the ship were in salt water and had no list¹³; and a ship must not proceed to sea when it is in contravention of this provision¹⁴.

Before any ship proceeds to sea from any port in the United Kingdom¹⁵, the master of that ship must produce to an officer of revenue and customs from whom a clearance¹⁶ for the ship is demanded for an international voyage¹⁷: (a) in the case of a Convention-size ship¹⁸, a valid Convention certificate¹⁹; or (b) in the case of any other ship, a United Kingdom Load Line Certificate²⁰ or a United Kingdom Load Line Exemption Certificate²¹, which is in force in relation to the ship²².

For these purposes²³, where a valid Convention certificate cannot be produced, the freeboard deck²⁴ and the freeboard must be determined in accordance with the provisions relating to load lines²⁵ and the appropriate load line is the maximum depth to which the ship may be loaded in salt water²⁶.

1 le subject to any exemption conferred under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241 (see PARA 672): see reg 6(1). As to the meaning of 'load line' see PARA 671 note 1.

2 As to the meaning of 'sea' see PARA 671 note 6. As to penalties relating to the contravention of heads (1) to (4) in the text see PARA 1189.

3 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(1)(a). Head (1) in the text refers to a ship that has been surveyed in accordance with the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241 (as to which see PARA 675 et seq): see reg 6(1)(a).

4 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(1)(b). For these purposes, 'appropriate marks' means the appropriate load lines, the deck-line (as to which see reg 16; and PARA 681) and load-line mark (as to which see reg 17; and PARA 681): Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1). 'Appropriate load line' means the load line directed to be marked on a ship pursuant to reg 7(2)(b) (see PARA 674), or in the case of a ship not surveyed under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, pursuant to an International Load Line Certificate or an International Load Line Certificate (1966) which is in force, indicating the maximum depth to which the ship may be loaded in salt water in a particular zone or area and seasonal period: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1) (definition amended by SI 2000/1335). 'International Load Line Certificate' means an International Load Line Certificate issued under the International Convention on Load Lines (London, 5 April to 4

July 1966; TS 58 (1968); Cmnd 3708) (the '1966 Convention'), as amended by the 1988 Protocol (Cmnd 4419); and 'International Load Line Certificate (1966)' means an International Load Line Certificate issued under the 1966 Convention before the relevant entry into force date, where 'relevant entry into force date' means the date when the 1988 Protocol enters into force in respect of the Government of the parent country of the ship in question: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1) (all definitions added by SI 2000/1335). As to the International Convention on Load Lines 1966 see PARA 8; and as to any reference, in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, to the 1966 Convention see PARA 672 note 2.

5 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(1)(c). For these purposes, 'conditions of assignment' means the conditions relating to construction, arrangement and stability with which a ship must comply in order to be assigned freeboards: reg 2(1) (definition added by SI 2000/1335). 'Freeboard' means the distance measured vertically downwards at amidships (ie the middle of the ship's length) from the upper edge of the deck-line described in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 16 (see PARA 681) to the position at which the upper edge of the load line appropriate to the freeboard is to be marked, where 'amidships' in relation to a ship means the middle of the ship's length (L): reg 2(1). As to the meaning of 'length (L)' see PARA 672 note 6. As to compliance with the applicable conditions of assignment of freeboards see PARA 674.

6 Ie the information required by the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32 (as to which see PARA 682): see reg 6(1)(d).

7 Ie the information required by the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 33 (as to which see PARA 682): see reg 6(1)(d).

8 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(1)(d).

9 For these purposes, 'non-United Kingdom ship' means any ship other than a United Kingdom ship within the meaning of the Merchant Shipping Act 1995 s 85(2) (see PARA 591 note 4): Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1).

10 For these purposes, 'valid Convention certificate' means either an International Load Line Certificate (1966) or an International Load Line Exemption Certificate (1966), which is in force, or an International Load Line Certificate or an International Load Line Exemption Certificate, which is in force: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1) (definition substituted by SI 2000/1335). As to the meaning of 'International Load Line Exemption Certificate' see PARA 672 note 2. 'International Load Line Exemption Certificate (1966)' means an International Load Line Exemption Certificate issued under the 1966 Convention before the relevant entry into force date (if any): Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1) (definition added by SI 2000/1335). As to the meanings of '1966 Convention' and 'relevant entry into force date' see note 4.

11 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(2). As to penalties relating to altering, falsely making or misusing certificates referred to in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, see PARA 1190.

12 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(3)(a). As to penalties relating to the contravention of reg 6(3)(a) see PARA 1189.

13 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(3)(b). As to penalties relating to the contravention of reg 6(3)(b) see PARA 1189.

14 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(4). As to penalties relating to the contravention of reg 6(4) see PARA 1189.

15 As to the meaning of 'United Kingdom' see PARA 17 note 3.

16 For these purposes, 'clearance' includes transire: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1). A transire is a warrant from the custom-house to let goods pass: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1065.

17 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(5) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). As to the meaning of 'international voyage' see PARA 672 note 3.

18 As to the meaning of 'Convention-size' in relation to a ship see PARA 672 note 6.

19 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(5)(a) (reg 6(5)(a), (b) substituted by SI 2000/1335).

20 For these purposes, 'United Kingdom Load Line Certificate' means a certificate issued under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 9(1) (see PARA 676) other than an International Load Line Certificate (as to which see note 4): reg 2(1) (definition added by SI 2000/1335).

21 As to the meaning of 'United Kingdom Load Line Exemption Certificate' see PARA 672 note 2.

22 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(5)(b) (as substituted: see note 19).

23 Ie for the purpose of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6: see reg 6(6).

24 For these purposes, 'freeboard deck' means the deck from which the freeboards assigned to the ship are calculated, being:

951 (1) the uppermost complete deck exposed to weather and sea, which has permanent means of closing all openings open to the weather, and below which all openings in the sides of the ship are fitted with permanent means of watertight closing; or

952 (2) at the request of the owner and subject to the approval of the Secretary of State, a deck lower than that described in head (1) above, it being a complete and permanent deck which is continuous both in a fore and aft direction at least between the machinery space and peak bulkheads of the ship, and athwartships,

a deck which is stepped being taken to consist for this purpose of the lowest line of the deck and the continuation of that line parallel to the upper part of the deck: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1) (definition amended by SI 2000/1335). 'Watertight', in relation to any part of the ship, means capable of preventing the passage of water in any direction: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1). Any approval given pursuant to the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, must be given in writing and must specify the date on which it takes effect and the conditions (if any) on which it is given: reg 2(5). As to the Secretary of State see PARA 38.

25 Ie in accordance with the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 6(6).

26 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(6).

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(ii) Freeboards

674. Assignment of freeboards and the conditions of assignment.

The Assigning Authority¹ must assign freeboards² to a United Kingdom ship in accordance with the requirements of the provisions relating to load lines³. The Authority must:

- 757 (1) determine the particulars of the freeboards to be assigned⁴;
- 758 (2) determine which load lines⁵ are to be marked⁶ on the sides of the ship⁷;
- 759 (3) determine the position where the load lines, the deck-line and the load line mark are to be so marked⁸; and
- 760 (4) complete a copy of the record of particulars⁹ relating to the conditions of assignment¹⁰.

Various types of freeboards, including timber freeboards, may be assigned under the provisions¹¹. The freeboards assigned to a new ship¹² must be determined in accordance with the relevant provisions of the appropriate Merchant Shipping Notice¹³; while the freeboards assigned to an existing ship¹⁴ must be determined in accordance with the provisions applicable to the ship under the law in force immediately before 21 July 1968¹⁵. In either case, a freeboard so determined¹⁶ is the minimum freeboard that may be assigned to the ship¹⁷, although a greater than minimum freeboard (except a timber freeboard) may be assigned in certain circumstances¹⁸.

Every ship to which freeboards are assigned under the load line provisions¹⁹ must comply with the conditions of assignment²⁰ applicable to that ship which are set out in the relevant provisions of the appropriate Merchant Shipping Notice²¹. However, an existing ship may, instead of complying with these conditions²², comply with such of the requirements relevant to the assignment of freeboards to ships as were applicable to the ship under the law in force immediately before 21 July 1968²³.

A ship ceases to comply with the conditions of assignment:

- 761 (a) if, at any time after the assignment of freeboards, there has been any alteration²⁴ of the hull, superstructures, fittings or appliances of the ship such that²⁵:
(i) a requirement relevant to the assignment of freeboards which is applicable to the ship²⁶ is not complied with²⁷; or (ii) it differs in a material respect from the record of particulars²⁸; or
- 762 (b) if the record of particulars is not on board²⁹.

However, a ship is taken to comply with the conditions of assignment notwithstanding an alteration referred to in head (a) above if³⁰: (A) amended freeboards appropriate to the condition of the ship have been assigned, the ship has been marked with these load lines and a new certificate issued to the owner of the ship accordingly³¹; or (B) the alteration has been inspected by a surveyor³² on behalf of the Authority and that Authority is satisfied that the alteration is not such as to require any change in the freeboards assigned to the ship, and full particulars of the alteration together with the date and place of his inspection have been indorsed by the surveyor on the record of particulars³³.

- 1 For these purposes, 'Assigning Authority' means the Secretary of State or any person or organisation authorised by him for the purposes of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: reg 2(1). As to the Secretary of State see PARA 38.
- 2 As to the meaning of 'freeboard' see PARA 673 note 5.
- 3 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 7(1). The text refers to the provisions of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 7(1). As to the meaning of 'load line' see PARA 671 note 1.
- 4 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 7(2)(a).
- 5 I.e. which of the load lines described in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, Pt III (regs 15-24) (as to which see PARA 681): see reg 7(2)(b).
- 6 I.e. marked in accordance with the requirements of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, Pt III (as to which see PARA 681): see reg 7(2)(b).
- 7 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 7(2)(b).
- 8 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 7(2)(c). As to the deck-line and load-line mark see PARA 681.
- 9 The record of particulars must be provided on the ship in a form given in Merchant Shipping Notice 1752(M) Sch 3 (Record of particulars): Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 27(1) (amended by SI 2000/1335). The record must be furnished by the Assigning Authority and be retained on board at all times: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 27(2). As to the meaning of 'Merchant Shipping Notice' see PARA 671 note 6.
- 10 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 7(2)(d).
- 11 The freeboards that can be assigned to a ship under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, are: the Summer freeboard; Tropical freeboard; Winter freeboard; Winter North Atlantic freeboard; Fresh Water freeboard and Tropical Fresh Water freeboard; and, in the case of ships carrying Timber, accordingly, Summer Timber freeboard; Winter Timber freeboard; Winter North Atlantic Timber freeboard; Tropical Timber freeboard; Fresh Water Timber freeboard and Tropical Fresh Water Timber freeboard: see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 28.
- 12 I.e. a ship whose keel is laid (or which is at a similar stage of construction) on or after the material date, being the date, in relation to a ship whose parent country is a Convention country other than the United Kingdom, on which the International Convention on Load Lines (London, 5 April to 4 July 1966; TS 58 (1968); Cmnd 3708) (the '1966 Convention') entered into force for that country and, in relation to any other ship, 21 July 1968: see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1); and PARA 672 note 6. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the International Convention on Load Lines 1966 see PARA 8; and as to any reference, in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, to the 1966 Convention see PARA 672 note 2.
- 13 See the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 29(1) (amended by SI 2000/1335). The text refers to the provisions of Merchant Shipping Notice 1752(M) Sch 4 (Freeboards), which take effect except as otherwise provided for in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 30 (see the text and notes 16-18): see reg 29(1) (as so amended).
- 14 As to the meaning of 'existing ship' for these purposes see PARA 672 note 6.
- 15 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 29(2). However, if an existing ship has been so constructed or modified as to comply with all the conditions of assignment set out in Merchant Shipping Notice 1752(M) Sch 2 (conditions of assignment) applicable to a new ship of her type, and application is made for the assignment to her of freeboards determined in accordance with Sch 4 (Freeboards), such freeboards must be assigned to her: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 29(2) proviso (amended by SI 2000/1335). As to the significance of the date 21 July 1968 see note 12.
- 16 I.e. a freeboard determined in accordance with the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 29 (see the text and notes 12-15): see reg 30(1).
- 17 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 30(1).

18 See the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 30(2), (3). Provision is also made for the correction of freeboards, once assigned, as a consequence of a variant deck-line marked pursuant to reg 16 (as to which see PARA 681): see reg 31 (amended by SI 2000/1335).

19 Ie under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 25(1) (reg 25 substituted by SI 2000/1335).

20 As to the meaning of 'conditions of assignment' for these purposes see PARA 673 note 5.

21 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 25(1) (as substituted: see note 19). The text refers to the conditions of assignment set out in Merchant Shipping Notice 1752(M) Sch 2 (conditions of assignment): see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 25(1) (as so substituted).

22 Ie the conditions of assignment referred to in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 25(1) (see the text and notes 19-21): see reg 25(2) (as substituted: see note 19).

23 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 25(2) (as substituted: see note 19). As to the significance of the date 21 July 1968 see note 12.

24 For these purposes, 'alteration' includes deterioration: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1).

25 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 26(1)(a).

26 Ie under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 25 (see the text and notes 19-23): see reg 26(1)(a)(i).

27 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 26(1)(a)(i).

28 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 26(1)(a)(ii). The text refers to the record of particulars provided in accordance with reg 27 (see note 9): see reg 26(1)(a)(ii).

29 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 26(1)(b). The text refers to the record of particulars which must be retained on board at all times in accordance with reg 27(2) (see note 9): see reg 26(1)(b).

30 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 26(2).

31 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 26(2)(a). As to penalties relating to altering, falsely making or misusing certificates referred to in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, see PARA 1190.

32 For these purposes, 'surveyor' means a surveyor appointed by the Secretary of State or an exclusive surveyor of any other Assigning Authority, an 'exclusive surveyor' being a surveyor appointed by and working exclusively for an Assigning Authority: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1).

33 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 26(2)(b). The text refers to the record of particulars referred to in reg 27(1) (see note 9): see reg 26(2)(b).

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(iii) Surveys and Certificates

675. The required initial survey, renewal survey and annual survey.

A United Kingdom ship is subject to the following surveys¹:

- 763 (1) an initial survey before the ship is put into service, which must include a complete inspection of its structure and equipment², and must be such as to ensure that the arrangements, materials and scantlings comply fully with the requirements of the provisions relating to load lines³;
- 764 (2) a renewal survey at intervals not exceeding five years⁴, which must be such as to ensure that the structure, equipment, arrangements, materials and scantlings comply fully with the requirements of the provisions relating to load lines⁵;
- 765 (3) an annual survey within the period of three months before or after each anniversary date of the appropriate certificate⁶ to ensure that⁷: (a) alterations⁸ have not been made to the hull or superstructures which would affect the calculations determining the position of the load line⁹; (b) the fittings and appliances for the protection of openings, guard rails, freeing ports and means of access to crew's quarters are maintained in an effective condition¹⁰; (c) the appropriate marks¹¹ are correctly and permanently indicated¹²; and (d) information as to the stability of the ship¹³, or as to the loading and ballasting of any ship of more than 150 metres in length¹⁴, is provided for the guidance of the master of the ship¹⁵.

The owner and master must ensure that after any of the surveys referred to in heads (1) to (3) above has been completed, no material alteration is made to the ship, its structure and equipment, without the approval¹⁶ of the Assigning Authority¹⁷.

After a satisfactory annual survey referred to in head (3) above, the surveyor¹⁸ must indorse the appropriate certificate¹⁹ accordingly²⁰.

1 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1).

2 *Ie* as required by the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 8(1)(a).

3 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(a). The text refers to the requirements of the provisions of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 8(1)(a). As to the meaning of 'load line' see PARA 671 note 1.

4 *Ie* except where the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10(2)(a), (5), (6) or (7) (see PARA 678) (duration and extension of certificates) is applicable: see reg 8(1)(b) (amended by SI 2000/1335).

5 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(b) (as amended: see note 4). The text refers to the requirements of the provisions of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 8(1)(b) (as so amended).

6 For these purposes, 'anniversary date', in relation to a certificate, means the day and the month of each year which corresponds to the date of the expiry of the certificate: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1) (definition added by SI 2000/1335). 'Appropriate certificate' means, in the case of a Convention-size ship, an International Load Line Certificate or an International Load Line Certificate (1966),

and, in the case of any other ship, a United Kingdom Load Line Certificate: Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1) (definition amended by SI 2000/1335). As to the meaning of 'Convention-size' in relation to a ship see PARA 672 note 6; as to the meanings of 'International Load Line Certificate' and 'International Load Line Certificate (1966)' see PARA 673 note 4; and as to the meaning of 'United Kingdom Load Line Certificate' see PARA 673 note 20. As to penalties relating to altering, falsely making or misusing certificates referred to in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, see PARA 1190.

7 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(c) (substituted by SI 2000/1335).

8 As to the meaning of 'alteration' for these purposes see PARA 674 note 24.

9 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(c)(i) (as substituted: see note 7).

10 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(c)(ii) (as substituted: see note 7).

11 As to the meaning of 'appropriate marks' for these purposes see PARA 673 note 4.

12 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(c)(iii) (as substituted: see note 7).

13 Ie the information required by the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32 (as to which see PARA 682): see reg 8(1)(c)(iv) (as substituted: see note 7).

14 Ie the information required by the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 33 (as to which see PARA 682): see reg 8(1)(c)(iv) (as substituted: see note 7).

15 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(c)(iv) (as substituted: see note 7).

16 Any approval given pursuant to the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, must be given in writing and must specify the date on which it takes effect and the conditions (if any) on which it is given: reg 2(5).

17 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(2). As to the meaning of 'Assigning Authority' see PARA 674 note 1. As to penalties, in connection with any survey required by these provisions, for knowingly or recklessly furnishing false information see PARA 1190.

18 As to the meaning of 'surveyor' for these purposes see PARA 674 note 32.

19 Ie the International Load Line Certificate, the International Load Line Certificate (1966) or, as the case may be, the United Kingdom Load Line Certificate: see reg 8(3) (amended by SI 2000/1335).

20 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(3) (as amended: see note 19).

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676. Issue of appropriate certificates.

The Assigning Authority¹ must issue² an International Load Line Certificate³ in the case of a Convention-size ship⁴, or a United Kingdom Load Line Certificate⁵ in respect of any other ship, in respect of a United Kingdom ship which has been duly surveyed and marked⁶. Whether the certificate is an International Load Line Certificate or a United Kingdom Load Line Certificate, it must be in the prescribed form⁷.

Subject to any exemption conferred by or under the provisions relating to load lines⁸, a ship must not proceed, or attempt to proceed, to sea⁹ unless the appropriate certificate¹⁰ is in force in respect of that ship¹¹.

Provision is made concerning the surveying of ships and the issuing of an International Load Line Certificate (or the endorsement of the appropriate certificate¹²) in respect of United Kingdom ships by the governments of other Convention countries¹³, upon request by the Secretary of State¹⁴; and the surveying and issuing of an International Load Line Certificate by the Assigning Authority in respect of ships transferred from the registries of the governments of other countries to the United Kingdom registry, provided certain conditions are satisfied¹⁵.

1 As to the meaning of 'Assigning Authority' see PARA 674 note 1.

2 In subject to the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10 (see PARA 678) (duration and extension of certificates): see reg 9(1) (amended by SI 2000/1335).

3 As to the meaning of 'International Load Line Certificate' see PARA 673 note 4.

4 As to the meaning of 'Convention-size' in relation to a ship see PARA 672 note 6.

5 As to the meaning of 'United Kingdom Load Line Certificate' see PARA 673 note 20.

6 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 9(1) (as amended: see note 2). The text refers to a United Kingdom ship which has been duly surveyed and marked in accordance with the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 9(1) (as so amended). As to penalties relating to altering, falsely making or misusing certificates referred to in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, see PARA 1190.

7 In the case of an International Load Line Certificate, the certificate must be in the form prescribed by the 1988 Protocol (Cmnd 4419) Annex III relating to the International Convention on Load Lines (London, 5 April to 4 July 1966; TS 58 (1968); Cmnd 3708) (the '1966 Convention'): see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 9(2) (substituted by SI 2000/1335). In the case of a United Kingdom Load Line Certificate, the certificate must be in the form prescribed in Merchant Shipping Notice 1752(M) Sch 8 (United Kingdom Load Line Certificates): see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 9(3) (amended by SI 2000/1335). As to the meaning of 'Merchant Shipping Notice' see PARA 671 note 6. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the International Convention on Load Lines 1966 see PARA 8; and as to any reference, in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, to the 1966 Convention see PARA 672 note 2.

8 In subject to any exemption conferred by or under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241 (see PARA 672): see reg 9(4). As to the meaning of 'load line' see PARA 671 note 1.

9 As to the meaning of 'sea' see PARA 671 note 6.

10 As to the meaning of 'appropriate certificate' for these purposes see PARA 675 note 6.

11 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 9(4). As to penalties relating to the contravention of reg 9(4) see PARA 1189.

12 The appropriate certificate is endorsed in the case of an annual survey required under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(c) (as to which see PARA 675): see reg 9(5) (amended by SI 2000/1335).

13 As to the meaning of 'Convention country' for these purposes see PARA 672 note 3.

14 See the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 9(5) (as amended: see note 12). As to the Secretary of State see PARA 38.

15 See the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 9(6) (amended by SI 2000/1335). As to the survey of non-United Kingdom ships see PARA 677.

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677. Issue of certificate following survey of non-United Kingdom ship.

The Secretary of State¹ may, at the request of a government of a Convention country² survey a ship registered in that country and, if satisfied that the requirements of the International Convention on Load Lines 1966³ are complied with and that a survey has been satisfactorily completed in accordance with the provisions relating to load lines⁴, issue to the ship an International Load Line Certificate⁵ and, where appropriate, indorse such certificates in accordance with the requirements of the 1966 Convention⁶. A certificate issued in accordance with such a request must contain a statement that it has been so issued and it has the same effect as if it was issued by that government and not by the Secretary of State⁷.

A United Kingdom Load Line Certificate⁸ may be issued to a non-United Kingdom ship⁹ which has been surveyed and marked in accordance with the load line provisions¹⁰. A certificate issued in this way is subject to the same conditions and has the same effect as a similar certificate issued to a United Kingdom ship¹¹, except that any certificate so issued in respect of a ship registered in a Convention country is valid only so long as the ship is not plying on international voyages¹², and must be cancelled by the Secretary of State if he has reason to believe that the ship is plying on such voyages¹³.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'Convention country' for these purposes see PARA 672 note 3.

3 I.e. the International Convention on Load Lines (London, 5 April to 4 July 1966; TS 58 (1968); Cmnd 3708) (the '1966 Convention') as amended by the 1988 Protocol (Cmnd 4419) relating to the Convention: see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 2(1) (amended by SI 2000/1335). As to the International Convention on Load Lines 1966 see PARA 8; and as to any reference, in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, to the 1966 Convention see PARA 672 note 2.

4 I.e. completed in accordance with the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 14(1) (amended by SI 2000/1335). As to the meaning of 'load line' see PARA 671 note 1.

5 As to the meaning of 'International Load Line Certificate' see PARA 673 note 4.

6 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 14(1) (as amended: see note 4). As to penalties relating to altering, falsely making or misusing certificates referred to in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, see PARA 1190.

7 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 14(1) (as amended: see note 4).

8 As to the meaning of 'United Kingdom Load Line Certificate' see PARA 673 note 20.

9 As to the meaning of 'non-United Kingdom ship' see PARA 673 note 9.

10 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 14(2). The text refers to a non-United Kingdom ship which has been surveyed and marked in accordance with the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 14(2).

11 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 14(3).

12 As to the meaning of 'international voyage' see PARA 672 note 3.

13 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 14(4).

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678. Duration and extension of issued certificates.

The duration of any certificate issued under the provisions relating to load lines¹ must not exceed five years² beginning with the date of completion of any initial or renewal survey³. However, this is subject to the following qualifications⁴:

- 766 (1) when the renewal survey⁵ is completed within three months before the expiry of the existing certificate, the new certificate is valid for a period beginning with the date of completion of the renewal survey and ending on a date which does not exceed five years from the expiry of the existing certificate⁶;
- 767 (2) when the renewal survey⁷ is completed after the expiry of the existing certificate, the new certificate is valid for a period beginning with the date of completion of the renewal survey and ending on a date which does not exceed five years from the expiry of the previous certificate⁸;
- 768 (3) when the renewal survey⁹ is completed more than three months before the expiry of the existing certificate, the new certificate is valid for a period beginning with the date of completion of the renewal survey and ending on a date which does not exceed five years from the date of completion of the renewal survey¹⁰;
- 769 (4) if, after the renewal survey, a new certificate cannot be issued to the ship before the expiry of the existing certificate, the Assigning Authority may extend the validity of the existing certificate for a period not exceeding five months¹¹;
- 770 (5) if, at the time when a certificate expires, a ship is not in a port in which it is to be surveyed, the Assigning Authority may extend the validity of the certificate, but this extension may be granted only where it appears proper and reasonable to the Assigning Authority to do so for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed¹²; and
- 771 (6) a certificate issued to a ship engaged on short voyages which has not already been extended¹³ may be extended by the Assigning Authority for a period of not more than one month beginning with the date of its expiry¹⁴.

In special circumstances, as determined by the Assigning Authority, a new certificate need not be dated from the expiry of the previous certificate before the extension was granted, as required by heads (1) to (3), (5) and (6) above; and, in these special circumstances, the new certificate is valid for a period ending on a date which is not more than five years from the date of completion of the renewal survey¹⁵.

If an annual survey is completed before the period of three months specified in relation thereto¹⁶ then: (a) a new anniversary date must be indorsed on the certificate, which must not be more than three months later than the date on which the annual survey was completed¹⁷; (b) the subsequent annual survey¹⁸ must be completed at the intervals prescribed in relation thereto¹⁹ using the new anniversary date²⁰; and (c) the expiry date of the certificate may remain unchanged provided one or more annual surveys are carried out so that the maximum prescribed intervals between the surveys²¹ are not exceeded²².

¹ ie under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 10(1) (reg 10 substituted by SI 2000/1335). As to the meaning of 'load line' see PARA 671 note 1. As to the issue of appropriate

certificates see PARA 676. As to penalties relating to altering, falsely making or misusing certificates referred to in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, see PARA 1190.

2 le subject to the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10(2), (4)-(6) (see heads (1) to (6) in the text): see reg 10(1) (as substituted: see note 1). If a certificate is issued for a period of less than five years, the Assigning Authority may extend the validity of the certificate beyond the expiry date to the maximum period specified in reg 10(1), provided that the annual surveys applicable when a certificate is issued for a period of five years are carried out as appropriate (as to which see PARA 675): reg 10(3) (as so substituted). As to the meaning of 'Assigning Authority' see PARA 674 note 1.

3 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10(1) (as substituted: see note 1). The text refers to the initial survey that is required under reg 8(1)(a) (as to which see PARA 675) and the renewal survey that is required under reg 8(1)(b) (as to which see PARA 675): see reg 10(1) (as so substituted).

4 See note 2.

5 le the renewal survey that is referred to in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(b) (as to which see PARA 675): see reg 10(2)(a) (as substituted: see note 1).

6 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10(2)(a) (as substituted: see note 1).

7 le the renewal survey that is referred to in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(b) (as to which see PARA 675): see reg 10(2)(b) (as substituted: see note 1).

8 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10(2)(b) (as substituted: see note 1).

9 le the renewal survey that is referred to in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(b) (as to which see PARA 675): see reg 10(2)(c) (as substituted: see note 1).

10 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10(2)(c) (as substituted: see note 1).

11 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10(4) (as substituted: see note 1). The extension referred to in head (4) in the text must be indorsed on the certificate, and may only be granted where there have been no alterations in the structure, equipment, arrangements, materials or scantlings which affect the ship's freeboard: reg 10(4) (as so substituted). As to the meaning of 'alteration' for these purposes see PARA 674 note 24; and as to the meaning of 'freeboard' see PARA 673 note 5.

12 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10(5) (as substituted: see note 1). Under head (5) in the text, no certificate may be extended for a period longer than three months beginning with the date of expiry, and a ship to which an extension is granted is not, on its arrival in the port in which it is to be surveyed, entitled by virtue of such extension to leave that port without having a new certificate: reg 10(5) (as so substituted). When the renewal survey is completed, the new certificate is valid for a period ending on a date which does not exceed five years from the expiry of the previous certificate before the extension was granted: reg 10(5) (as so substituted).

13 le under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10(3) (as to which see note 2), reg 10(4) (see head (4) in the text) or reg 10(5) (see head (5) in the text): see reg 10(6) (as substituted: see note 1).

14 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10(6) (as substituted: see note 1). Under head (6) in the text, when the renewal survey is completed (as to which see PARA 675), the new certificate is valid for a period ending on a date which does not exceed five years from the expiry of the previous certificate before the extension was granted: reg 10(6) (as so substituted).

15 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10(7) (as substituted: see note 1).

16 le before the period specified in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(c) (as to which see PARA 675): see reg 10(8) (as substituted: see note 1).

17 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10(8)(a) (as substituted: see note 1).

18 le required by the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(c) (as to which see PARA 675): see reg 10(8)(b) (as substituted: see note 1).

19 le prescribed by the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(c) (as to which see PARA 675): see reg 10(8)(b) (as substituted: see note 1).

20 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10(8)(b) (as substituted: see note 1).

21 le the maximum intervals between the surveys prescribed by the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(c) (as to which see PARA 675): see reg 10(8)(c) (as substituted: see note 1).

22 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 10(8)(c) (as substituted: see note 1).

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679. Certificates ceasing to be valid, and surrender and cancellation of certificates.

An appropriate certificate¹ issued in respect of a United Kingdom ship² ceases to be valid where³:

- 772 (1) material alterations⁴ have taken place in the hull or superstructures of the ship such as would necessitate the assignment of an increased freeboard⁵;
- 773 (2) the fittings and appliances for the protection of openings, guard rails, freeing ports and means of access to crew's quarters⁶ are not maintained in an effective condition⁷;
- 774 (3) the certificate is not appropriately indorsed⁸ to show that it has been the subject of an annual survey⁹;
- 775 (4) the structural strength of the ship is lowered to such an extent that the ship is unsafe¹⁰;
- 776 (5) a new certificate is issued in respect of the ship¹¹; or
- 777 (6) the ship ceases to be a United Kingdom ship¹².

The Secretary of State¹³ may cancel an appropriate certificate issued in respect of a United Kingdom ship if he is satisfied that¹⁴:

- 778 (a) the certificate was issued on false or erroneous information¹⁵;
- 779 (b) information on the basis of which freeboards were assigned to the ship was incorrect in a material particular¹⁶; or
- 780 (c) the ship ceases to comply with the conditions of assignment relating to it¹⁷.

However, where the Secretary of State proposes to cancel a certificate, he must first notify the owner in writing, specifying the grounds for the proposed cancellation¹⁸; and, unless he considers that urgent safety considerations so require¹⁹, the Secretary of State must not cancel the certificate until the owner has been given a reasonable opportunity to make representations, and until the Secretary of State has considered any such representations made²⁰.

The Secretary of State may require any certificate duly issued²¹ which has expired, ceased to be valid, or been cancelled, to be surrendered as he directs²².

1 As to the meaning of 'appropriate certificate' for these purposes see PARA 675 note 6.

2 As to the issue of appropriate certificates see PARA 676.

3 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(1) (reg 11 substituted by SI 2000/1335). As to penalties relating to altering, falsely making or misusing certificates referred to in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, see PARA 1190.

4 As to the meaning of 'alteration' for these purposes see PARA 674 note 24.

5 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(1)(a) (as substituted: see note 3). As to the meaning of 'freeboard' see PARA 673 note 5. As to the assignment of freeboards see PARA 674.

- 6 le those fittings and appliances mentioned in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(1)(c)(ii) (as to which see PARA 675): see reg 11(1)(b) (as substituted: see note 3).
- 7 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(1)(b) (as substituted: see note 3).
- 8 le in accordance with the requirements of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 8(3) (as to which see PARA 675): see reg 11(1)(c) (as substituted: see note 3).
- 9 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(1)(c) (as substituted: see note 3). The text refers to a survey conducted in accordance with reg 8(1)(c) (as to which see PARA 675): see reg 11(1)(c) (as so substituted).
- 10 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(1)(d) (as substituted: see note 3).
- 11 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(1)(e) (as substituted: see note 3).
- 12 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(1)(f) (as substituted: see note 3).
- 13 As to the Secretary of State see PARA 38.
- 14 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(2) (as substituted: see note 3).
- 15 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(2)(a) (as substituted: see note 3).
- 16 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(2)(b) (as substituted: see note 3).
- 17 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(2)(c) (as substituted: see note 3). As to compliance with the applicable conditions of assignment of freeboards see PARA 674.
- 18 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(3) (as substituted: see note 3). The requirement that the notification referred to in reg 11(3) should be in writing is satisfied where the text of the notification is transmitted by electronic means, is received in legible form, and is capable of being used for subsequent reference: reg 11(7) (as so substituted).
- 19 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(5) (as substituted: see note 3).
- 20 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(4) (as substituted: see note 3).
- 21 le any certificate issued under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 11(6) (as substituted: see note 3).
- 22 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(6) (as substituted: see note 3). A failure to surrender such a certificate that the Secretary of State requires and directs to be surrendered under reg 11(6) is an offence: see PARA 1190.

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680. Publication of load line certificate and notification of draughts.

Where an appropriate certificate¹ or an exemption certificate² is issued³ in respect of a United Kingdom ship, the owner and master of the ship must ensure that the certificate is kept legible and posted up in some conspicuous place on board the ship⁴.

Before any United Kingdom ship leaves any dock, wharf, harbour or other place for the purpose of proceeding to sea⁵, the master of the ship must⁶ ensure a notice is posted up in some conspicuous place on board the ship, in a form and containing such particulars relating to the depth to which the ship is loaded as is specified in the relevant provisions of the appropriate Merchant Shipping Notice⁷. Where a notice has been posted up in this way⁸, the master of the ship must cause it to be kept posted and legible until the ship arrives at some other dock, wharf, harbour or place⁹.

1 As to the meaning of 'appropriate certificate' for these purposes see PARA 675 note 6.

2 As to the meaning of 'exemption certificate' for these purposes see PARA 672 note 2.

3 As to the issue of appropriate certificates see PARA 676; and as to exemptions generally see PARA 672.

4 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 13(1). As to penalties relating to the contravention of reg 13 see PARA 1189; and as to penalties relating to altering, falsely making or misusing certificates referred to in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, see PARA 1190.

5 As to the meaning of 'sea' see PARA 671 note 6.

6 Ie except where the ship is employed on a near-coastal voyage: see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 13(4). For these purposes, 'near-coastal voyage' means a voyage during which the vessel is never more than 150 nautical miles from a safe haven in the United Kingdom, or never more than 30 nautical miles from a safe haven in the Republic of Ireland: reg 2(1). As to the meaning of 'United Kingdom' see PARA 17 note 3.

7 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 13(2) (amended by SI 2000/1335). The text refers to the form and particulars as specified in Merchant Shipping Notice 1752(M) Sch 7 (notice of load lines to be posted up before sailing): see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 13(2) (as so amended). As to the meaning of 'Merchant Shipping Notice' see PARA 671 note 6. See note 4.

8 Ie in accordance with the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 13(2) (see the text and notes 5-7): see reg 13(3).

9 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 13(3). See note 4.

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(iv) Load Lines and Marks

681. Specification of load lines and marks.

Provisions relating to load lines¹ make detailed specification as to the marking of deck-lines, load line marks and load lines², in particular:

- 781 (1) the exact size and positioning of the deck-line³;
- 782 (2) the exact size and positioning of the load line mark⁴;
- 783 (3) the exact size, variant type and positioning of the load lines⁵;
- 784 (4) the exact size, variant type and positioning of timber load lines⁶;
- 785 (5) the exact positioning of each load line mark on each side of the ship⁷; and
- 786 (6) the method of marking⁸.

The appropriate load line⁹ in respect of a ship at any particular zone or area and seasonal period must be ascertained in accordance with the relevant provisions of the appropriate Merchant Shipping Notice¹⁰.

After the appropriate marks have been made on a ship, it is the duty of the owner and master to keep the ship so marked¹¹; and the marks must not be concealed, removed, altered, defaced or obliterated except with the authority of the Assigning Authority¹².

1 See the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, Pt III (regs 15-24): see reg 15 (amended by SI 2000/1335). As to the meaning of 'load line' see PARA 671 note 1.

2 See the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 15 (as amended: see note 1). As to the determination of lines to be marked see PARA 674.

3 See the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 16.

4 See the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 17. The identity of the Assigning Authority may be marked alongside the load line mark (which is a ring) either above the horizontal line which passes through the centre of the ring, or above and below it: see reg 24(1). As to the exact specification of such a mark see reg 24(2). As to the meaning of 'Assigning Authority' see PARA 674 note 1.

5 See the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 18.

6 See the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 19 (amended by SI 2000/1335).

7 See the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 21.

8 See the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 22 (amended by SI 2000/1335).

9 As to the meaning of 'appropriate load line' see PARA 673 note 4.

10 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 20 (amended by SI 2000/1335). The text refers to the provisions of Merchant Shipping Notice 1752(M) Sch 1 (appropriate load lines and seasonal zones, areas and periods): see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 20 (as so amended). As to the meaning of 'Merchant Shipping Notice' see PARA 671 note 6.

Where a passenger ship is marked with subdivision load lines, and the lowest of those lines is lower than the line which is the appropriate load line then that subdivision load line has effect as if it is the appropriate load

line for the purposes of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241 (see PARA 674): reg 7(3).

11 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 23(a). As to penalties relating to the contravention of reg 23(a) see PARA 1189.

12 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 23(b). As to penalties relating to the contravention of reg 23(b) see PARA 1189.

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(v) Information for the Master

682. Information as to stability, loading and ballasting of ships.

The owner of every ship¹ must provide, for the guidance of the master, information relating to the stability of the ship². Such information must be in the form of a book which must be kept on the ship at all times in the custody of the master³. In the case of a United Kingdom ship, the information must include all matters specified in the relevant provisions of the appropriate Merchant Shipping Notice⁴ and must be in the form required therein⁵.

The information must be based on the determination of stability taken from an inclining test carried out in the presence of a surveyor⁶ appointed by the Secretary of State⁷ or, in the case of any of the following type of ship⁸, namely

- 787 (1) an oil tanker over 100 metres in length⁹;
- 788 (2) a bulk carrier, or an ore carrier, over 150 metres in length¹⁰;
- 789 (3) a single deck bulk carrier over 100 metres in length but not exceeding 150 metres in length¹¹;
- 790 (4) a single deck dry cargo ship over 100 metres in length¹²;
- 791 (5) a purpose built container ship over 125 metres in length¹³;
- 792 (6) a column stabilised mobile offshore drilling unit¹⁴; or
- 793 (7) a column stabilised mobile offshore support unit¹⁵,

by the Assigning Authority¹⁶. The information must be amended whenever any alterations¹⁷ are made to the ship or changes occur to it which will materially affect the information and, if necessary, the ship must be re-inclined¹⁸. However, the inclining test may be dispensed with if:

- 794 (a) in the case of any ship, basic stability data is available from the inclining test of a sister ship and the Secretary of State (or, in the case of a ship falling within any of heads (1) to (7) above¹⁹, the Assigning Authority) is satisfied that reliable stability information can be obtained from such data²⁰; and
- 795 (b) in the case of a ship specially designed for the carriage of liquids or ore in bulk (or of any class of such ships), the information available in respect of similar ships shows that the ship's proportions and arrangements will ensure more than sufficient stability in all probable loading conditions²¹.

Before the information is issued to the master, if it relates to a ship falling within any of heads (1) to (7) above²², it must be approved²³ either by the Secretary of State or by the Authority which assigned freeboards to the ship²⁴; and if the information relates to any other ship it must be approved by the Secretary of State before being so issued²⁵.

The owner of any ship of more than 150 metres in length²⁶ specially designed for the carriage of liquids or ore in bulk must provide, for the guidance of the master, information relating to the loading and ballasting of the ship²⁷. This information must indicate the maximum stresses permissible for the ship and specify the manner in which the ship is to be loaded and ballasted to avoid the creation of unacceptable stresses in its structure²⁸.

1 le every ship to which the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, apply (see PARA 671): see reg 32(1).

2 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32(1).

3 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32(1).

4 le all matters specified in Merchant Shipping Notice 1752(M) Sch 6 (stability): see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32(2) (amended by SI 2000/1335). As to the meaning of 'Merchant Shipping Notice' see PARA 671 note 6.

5 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32(2) (as amended: see note 4). The text refers to the requirement for the specified information to be in the form required by Merchant Shipping Notice 1752(M) Sch 6 (stability): see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32(2) (as so amended). The information must also be in accordance with the requirements of reg 32(3)-(5) (see the text and notes 6-25): reg 32(2) (as so amended).

6 As to the meaning of 'surveyor' for these purposes see PARA 674 note 32.

7 As to the Secretary of State see PARA 38.

8 le in the case of a ship listed in Merchant Shipping Notice 1752(M) Sch 6 Pt II (ships in relation to which the Secretary of State's or the Assigning Authority's approval of the stability information is required): see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32(3) (amended by SI 2000/1335).

9 See Merchant Shipping Notice 1752(M) Sch 6 Pt II para 13(a).

10 See Merchant Shipping Notice 1752(M) Sch 6 Pt II para 13(b).

All terminals in the United Kingdom or in United Kingdom waters visited by bulk carriers, all bulk carriers which are United Kingdom ships and which call at a terminal to which the Merchant Shipping (Safe Loading and Unloading of Bulk Carriers) Regulations 2003, SI 2003/2002, apply, and all other bulk carriers which call at a terminal to which those regulations apply, while they are within United Kingdom waters must comply with the Merchant Shipping (Safe Loading and Unloading of Bulk Carriers) Regulations 2003, SI 2003/2002: see reg 4(1). Those regulations do not apply to terminals which only in exceptional circumstances are used for loading or unloading dry cargo in bulk into or from bulk carriers, or in cases where the loading or unloading is carried out solely with the equipment of the bulk carrier concerned: see reg 4(2).

11 See Merchant Shipping Notice 1752(M) Sch 6 Pt II para 13(c). See note 10.

12 See Merchant Shipping Notice 1752(M) Sch 6 Pt II para 13(d).

13 See Merchant Shipping Notice 1752(M) Sch 6 Pt II para 13(e).

14 See Merchant Shipping Notice 1752(M) Sch 6 Pt II para 13(f). For these purposes, 'mobile offshore drilling unit' means a ship capable of engaging in drilling operations for the exploration or exploitation of resources beneath the sea bed such as liquid or gaseous hydrocarbons, sulphur or salt; and 'column stabilised' means constructed with the main deck of the unit connected to its underwater hull or footings by columns or caissons: see Sch 6 Pt II para 14.

15 See Merchant Shipping Notice 1752(M) Sch 6 Pt II para 13(g). For these purposes, 'mobile offshore support unit' means a ship used in connection with the offshore petroleum industry to provide ancillary services such as accommodation, cranes or repair facilities: see Sch 6 Pt II para 14.

16 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32(3) (as amended: see note 8). As to the meaning of 'Assigning Authority' see PARA 674 note 1.

17 As to the meaning of 'alteration' for these purposes see PARA 674 note 24.

18 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32(3) (as amended: see note 8).

19 le in the case of a ship listed in Merchant Shipping Notice 1752(M) Sch 6 Pt II: see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32(4)(a) (amended by SI 2000/1335).

20 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32(4)(a) (as amended: see note 19).

21 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32(4)(b).

22 le if it relates to a ship listed in Merchant Shipping Notice 1752(M) Sch 6 Pt II: see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32(5)(a) (amended by SI 2000/1335).

23 Any approval given pursuant to the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, must be given in writing and must specify the date on which it takes effect and the conditions (if any) on which it is given: reg 2(5).

24 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32(5)(a) (as amended: see note 22). As to the meaning of 'freeboard' see PARA 673 note 5. As to the assignment of freeboards see PARA 674.

25 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32(5)(b).

26 As to the meaning of 'length' for these purposes see PARA 672 note 6.

27 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 33(1).

28 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 33(2). In the case of a United Kingdom ship, reg 32(5) has effect in respect of information required under reg 33, and the information so approved must be included in the book referred in reg 32(1) (see the text and notes 1-3): reg 33(3).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/7. SAFETY AND SECURITY AT SEA/(2) LOAD LINES/(vi) Equivalents/683. Power to allow equivalents.

(vi) Equivalents

683. Power to allow equivalents.

The Assigning Authority¹ may, with the approval of the Secretary of State²:

- 796 (1) allow any fitting, material, appliance or apparatus to be fitted in a ship, or allow other provisions to be made in a ship, in the place of any fitting, material, appliance, apparatus or provision respectively which is required under any of the provisions relating to load lines³, if satisfied by trial or otherwise that it is at least as effective as that so required⁴; or
- 797 (2) allow in an exceptional case departure from the requirements of any of the provisions relating to load lines⁵ on condition that the freeboards to be assigned to the ship⁶ are increased to such an extent as to satisfy the Secretary of State that the safety of the ship and protection afforded to the crew will be no less effective than would be the case if the ship fully complied with those requirements and there were no such increase of freeboards⁷.

1 As to the meaning of 'Assigning Authority' see PARA 674 note 1.

2 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 34. As to the Secretary of State see PARA 38. Any approval given pursuant to the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, must be given in writing and must specify the date on which it takes effect and the conditions (if any) on which it is given: reg 2(5).

3 I.e. under any of the provisions of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 34(a). As to the meaning of 'load line' see PARA 671 note 1.

4 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 34(a).

5 I.e. from the provisions of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 34(b).

6 As to the assignment of freeboards see PARA 674. As to the meaning of 'freeboard' see PARA 673 note 5.

7 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 34(b).

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(3) TEMPORARY EXCLUSION ZONES

684. Power to establish temporary exclusion zones where a casualty is wrecked, damaged or in distress.

Where a ship¹, structure or other thing (the 'relevant casualty')² is in United Kingdom waters³, or in a part of the sea within which the jurisdiction and rights of the United Kingdom are exercisable for the purposes of the protection and preservation of the marine environment⁴, and where the relevant casualty is wrecked, damaged or in distress⁵, then, if it appears to the Secretary of State⁶:

- 798 (1) that significant harm⁷ will or may occur as a direct or indirect result of the relevant casualty being wrecked, damaged or in distress⁸; and
- 799 (2) that, if access to an area around the relevant casualty were restricted⁹, significant harm, or the risk of such harm, would be prevented or reduced¹⁰,

he may by a direction¹¹ identify an area to which access is so restricted (a 'temporary exclusion zone')¹².

A temporary exclusion zone may not include any area which is neither within United Kingdom waters nor within a part of the sea within which the jurisdiction and rights of the United Kingdom are exercisable for the purposes of the protection and preservation of the marine environment¹³.

If it appears to the Secretary of State at any time after a temporary exclusion zone is established that the zone is larger than is needed for the purpose of preventing or reducing significant harm, or the risk of such harm, he must by direction vary the direction establishing the zone accordingly¹⁴.

A temporary exclusion zone may be identified¹⁵ by reference to the position of the relevant casualty from time to time¹⁶.

If it appears to the Secretary of State at any time after a temporary exclusion zone is established that the zone is not needed for the purpose of preventing or reducing significant harm, or the risk of such harm, he must by direction revoke the direction establishing the zone¹⁷.

Where the Secretary of State gives a direction in relation to temporary exclusion zones¹⁸, he must¹⁹: (a) as soon as practicable, publish it in such manner as he considers appropriate for bringing it to the attention of persons likely to be affected by it²⁰; and (b) within the period of 24 hours from the giving of the direction, send a copy of it to the International Maritime Organisation²¹.

1 As to the meaning of 'ship' see PARA 229.

2 Merchant Shipping Act 1995 s 100A(1) (s 100A added by the Merchant Shipping and Maritime Security Act 1997 s 1). For the purposes of the Merchant Shipping Act 1995 ss 100A, 100B, 'relevant casualty' means the ship, structure or other thing referred to in s 100A(1): see s 100A(1) (as so added).

3 As to the meaning of 'United Kingdom waters' see PARA 48 note 10. As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping Act 1995 s 100A(1)(a) (as added: see note 2). The reference in the text to a part of the sea within which the jurisdiction and rights of the United Kingdom are exercisable for the purposes of the protection and preservation of the marine environment is to a part of the sea specified by virtue of the Merchant Shipping Act 1995 s 129(2)(b), providing for orders to specify areas of sea above any of the areas for the time being designated under the Continental Shelf Act 1964 s 1(7) (as to which see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636) as waters within which the jurisdiction and rights of the United Kingdom are exercisable in accordance with the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941) (the 'United Nations Convention on the Law of the Sea 1982') (as to which see PARA 10) Pt XII (arts 192-237) (protection and preservation of the marine environment) (as to which see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 402 et seq): see the Merchant Shipping Act 1995 s 100A(1)(a) (as so added).

5 Merchant Shipping Act 1995 s 100A(1)(b) (as added: see note 2).

6 Merchant Shipping Act 1995 s 100A(2) (as added: see note 2). As to the Secretary of State see PARA 38.

7 For these purposes, 'significant harm' means either significant pollution in the United Kingdom, in United Kingdom waters or in a part of the sea specified by virtue of the Merchant Shipping Act 1995 s 129(2)(b) (as to which see note 4), or significant damage to persons or property: s 100A(3) (as added: see note 2).

8 Merchant Shipping Act 1995 s 100A(2)(a) (as added: see note 2).

9 Ie in accordance with the Merchant Shipping Act 1995 s 100B (see PARA 685): see s 100A(2)(b) (as added: see note 2)

10 Merchant Shipping Act 1995 s 100A(2)(b) (as added: see note 2).

11 As to the Secretary of State's power to make directions under the Merchant Shipping Act 1995 generally see PARA 41. As to directions given under s 100A see the text and notes 18-21.

12 Merchant Shipping Act 1995 s 100A(2) (as added: see note 2). However, s 100A(2) does not apply where an order under the Protection of Wrecks Act 1973 s 2 (see PARA 1012) has effect in relation to the relevant casualty: Merchant Shipping Act 1995 s 100A(9) (added by the Merchant Shipping and Maritime Security Act 1997 s 1).

13 Merchant Shipping Act 1995 s 100A(4) (as added: see note 2). The reference in the text to a part of the sea within which the jurisdiction and rights of the United Kingdom are exercisable for the purposes of the protection and preservation of the marine environment is to a part of the sea specified by virtue of the Merchant Shipping Act 1995 s 129(2)(b) (see note 4): see s 100A(4) (as so added).

14 Merchant Shipping Act 1995 s 100A(5) (as added: see note 2). As to directions given under s 100A see the text and notes 18-21.

15 Ie subject to the Merchant Shipping Act 1995 s 100A(4), (5) (see the text and notes 13-14): see s 100A(6) (as added: see note 2).

16 Merchant Shipping Act 1995 s 100A(6) (as added: see note 2).

17 Merchant Shipping Act 1995 s 100A(7) (as added: see note 2). As to directions given under s 100A see the text and notes 18-21.

18 Ie under the Merchant Shipping Act 1995 s 100A: see s 100A(8) (as added: see note 2).

19 Merchant Shipping Act 1995 s 100A(8) (as added: see note 2).

20 Merchant Shipping Act 1995 s 100A(8)(a) (as added: see note 2).

21 Merchant Shipping Act 1995 s 100A(8)(b) (as added: see note 2). As to the International Maritime Organisation see PARA 13.

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685. Control of movements affected by temporary exclusion zones.

A direction establishing a temporary exclusion zone¹ may contain a statement to the effect that the direction is given for the purpose of preventing or reducing significant pollution (or the risk of significant pollution) in the United Kingdom², in United Kingdom waters³, or in a part of the sea within which the jurisdiction and rights of the United Kingdom are exercisable for the purposes of the protection and preservation of the marine environment⁴. If a direction establishing a temporary exclusion zone contains a statement to such effect, no ship⁵ may⁶ enter or remain in the zone⁷. However, if such a direction establishing a temporary exclusion zone does not contain a statement to such effect, then⁸:

- 800 (1) no ship may enter or remain in any part of the zone that is in United Kingdom waters⁹; and
- 801 (2) no United Kingdom ship¹⁰ may enter or remain in any part of the zone that is in a part of the sea within which the jurisdiction and rights of the United Kingdom are exercisable for the purposes of the protection and preservation of the marine environment¹¹.

A ship may, however, enter or remain in a temporary exclusion zone or a part of such a zone if it does so¹²:

- 802 (a) in accordance with the direction establishing the zone¹³;
- 803 (b) with the consent of the Secretary of State¹⁴; or
- 804 (c) in accordance with regulations made by the Secretary of State for these purposes¹⁵.

A qualifying foreign ship¹⁶ may enter a temporary exclusion zone or a part of such a zone if, in doing so, it is exercising the right of transit passage¹⁷ through straits used for international navigation¹⁸.

If a ship enters or remains in a temporary exclusion zone or a part of such a zone in contravention¹⁹ of the restrictions in force²⁰, its owner and its master²¹ are each guilty of an offence²².

1 As to the meaning of 'temporary exclusion zone' see PARA 684.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

4 Merchant Shipping Act 1995 s 100B(2) (s 100B added by the Merchant Shipping and Maritime Security Act 1997 s 1). The reference in the text to a part of the sea within which the jurisdiction and rights of the United Kingdom are exercisable for the purposes of the protection and preservation of the marine environment is to a part of the sea specified by virtue of the Merchant Shipping Act 1995 s 129(2)(b) (see PARA 684 note 4): see s 100B(2) (as so added).

5 As to the meaning of 'ship' see PARA 229.

- 6 le subject to the Merchant Shipping Act 1995 s 100B(4) (see the text and notes 12-15): see s 100B(1) (as added: see note 4).
- 7 Merchant Shipping Act 1995 s 100B(1) (as added: see note 4).
- 8 Merchant Shipping Act 1995 s 100B(3) (as added: see note 4). Heads (1) and (2) in the text are subject to s 100B(4), (5) (see the text and notes 12-18): see s 100B(3) (as so added).
- 9 Merchant Shipping Act 1995 s 100B(3)(a) (as added: see note 4).
- 10 As to the meaning of 'United Kingdom ship' see PARA 230.
- 11 Merchant Shipping Act 1995 s 100B(3)(b) (as added: see note 4). The reference in the text to a part of the sea within which the jurisdiction and rights of the United Kingdom are exercisable for the purposes of the protection and preservation of the marine environment is to a part of the sea specified by virtue of s 129(2)(b) (see PARA 684 note 4): see s 100B(3)(b) (as so added).
- 12 Merchant Shipping Act 1995 s 100B(4) (as added: see note 4).
- 13 Merchant Shipping Act 1995 s 100B(4)(a) (as added: see note 4). As to directions establishing a temporary exclusion zone see PARA 684.
- 14 Merchant Shipping Act 1995 s 100B(4)(b) (as added: see note 4). As to the Secretary of State see PARA 38.
- 15 Merchant Shipping Act 1995 s 100B(4)(c) (as added: see note 4). As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41. At the date at which this volume states the law, no such regulations had been made under s 100B.
- 16 As to the meaning of 'qualifying foreign ship' see PARA 19.
- 17 As to the meaning of 'right of transit passage' see PARA 68 note 11.
- 18 Merchant Shipping Act 1995 s 100B(5) (as added: see note 4). As to the meaning of 'straits used for international navigation' see PARA 68 note 12.
- 19 As to the meaning of 'contravention' see PARA 50 note 3.
- 20 le in contravention of the Merchant Shipping Act 1995 s 100B(1) (see the text and notes 5-7) or s 100B(3) (see the text and notes 8-11): see s 100B(6); and PARA 1191.
- 21 As to the meaning of 'master' see PARA 424.
- 22 See the Merchant Shipping Act 1995 s 100B(6); and PARA 1191.

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(4) SAFETY DIRECTIONS

686. Secretary of State's power to give safety directions in respect of a ship.

The Secretary of State¹ may give a direction in respect of a ship² if, in his opinion, an accident³ has occurred to or in the ship⁴, if, in his opinion, the accident has created a risk to safety or a risk of pollution by a hazardous substance⁵, and if, in his opinion, the direction is necessary to remove or reduce the risk⁶. The direction may be given to:

- 805 (1) the owner of the ship⁷;
- 806 (2) a person in possession of the ship⁸;
- 807 (3) the ship's master⁹;
- 808 (4) a ship's pilot¹⁰;
- 809 (5) the owner of a hazardous substance in the ship¹¹;
- 810 (6) a salvor in possession of the ship¹²;
- 811 (7) a person who is the servant or agent of a salvor in possession and who is in charge of the salvage operation¹³; or
- 812 (8) where the ship is in or has been directed to move into waters regulated or managed by a harbour authority¹⁴, the harbour authority or harbour master¹⁵.

The direction may require the person to whom it is given to take or refrain from taking any specified action in relation to the ship¹⁶, anything which is or was in the ship¹⁷, anything which forms or formed part of the ship¹⁸, anything which is or was being towed by the ship¹⁹, or a person on the ship²⁰. In particular, the direction may require a person to ensure that:

- 813 (a) a ship or other thing is moved or not moved²¹;
- 814 (b) a ship or other thing is moved or not moved to or from a specified area or over a specified route²²;
- 815 (c) cargo is or is not unloaded or discharged²³;
- 816 (d) a substance is or is not unloaded or discharged²⁴;
- 817 (e) specified salvage measures are taken or not taken²⁵;
- 818 (f) a person is put ashore or on board a ship²⁶.

The Secretary of State also may give such a direction in respect of a ship if, in his opinion, an accident has occurred to or in the ship²⁷, if, in his opinion, the accident has created a risk to safety or a risk of pollution by a hazardous substance²⁸, and if, in his opinion, the direction is necessary to remove or reduce the risk²⁹, and he may give the direction to a person in charge of coastal land or premises³⁰. Such a direction must be given in writing (or, if that is not reasonably practicable, confirmed in writing as soon as is reasonably practicable)³¹ and may require the person to whom it is given to grant access or facilities to or in relation to the ship or any person or thing which is or was on the ship³². In particular, such a direction may require a person:

- 819 (i) to permit persons to land³³;
- 820 (ii) to make facilities available for the undertaking of repairs or other works³⁴;

- 821 (iii) to make facilities available for the landing, storage and disposal of cargo or other things³⁵.

However, before giving such a direction³⁶ in respect of land or premises, the Secretary of State must, unless he thinks that it is not reasonably practicable, give the person to whom he proposes to give the direction an opportunity to make representations, and consider any representations made³⁷.

The Secretary of State also may give a direction in respect of a ship³⁸ if in his opinion it is necessary for the purpose of securing the safety of the ship or of other ships³⁹, securing the safety of persons or property⁴⁰, or preventing or reducing pollution⁴¹. The direction may be given to the owner of the ship⁴², to a person in possession of the ship⁴³, or to the master of the ship⁴⁴; and may require the person to whom it is given to ensure that:

- 822 (A) the ship is moved or not moved from a specified place or area in United Kingdom waters⁴⁵;
 823 (B) the ship is moved or not moved to a specified place or area in United Kingdom waters⁴⁶;
 824 (C) the ship is moved or not moved over a specified route in United Kingdom waters⁴⁷;
 825 (D) the ship is removed from United Kingdom waters⁴⁸.

A person acting on behalf of the Secretary of State may board a ship for the purpose of serving a safety direction⁴⁹ and may enter land or premises for that purpose also⁵⁰.

Where the Secretary of State proposes to give a safety direction⁵¹ to a company or other body, and he thinks that the usual provisions as to service on a company⁵² or on an overseas company⁵³ do not apply⁵⁴, he may serve the direction in such manner as he thinks most suitable⁵⁵.

A person to whom a safety direction is given⁵⁶ must comply with the direction⁵⁷, and he commits an offence if he fails so to comply⁵⁸. A person to whom a safety direction is given also must try to comply with the direction in a manner which avoids risk to human life⁵⁹.

If a person intentionally obstructs another person who is acting on behalf of the Secretary of State in connection with the giving of such a direction⁶⁰, or who is complying with such a direction, that first-named person commits an offence⁶¹.

1 As to the Secretary of State see PARA 38.

2 Ie under the Merchant Shipping Act 1995 s 108A(1), Sch 3A para 1: see Sch 3A para 1(1) (s 108A, Sch 3A added by the Marine Safety Act 2003 s 1(1), (2), Sch 1). As to the Secretary of State's power to make directions under the Merchant Shipping Act 1995 generally see PARA 41. A provision made by or by virtue of the Merchant Shipping Act 1995 (including one which creates an offence) has no effect in so far as it is inconsistent with the exercise by or on behalf of the Secretary of State of a power under Sch 3A, or would interfere with a person's compliance with a direction under Sch 3A, or would interfere with action taken by virtue of Sch 3A: s 108A(2) (as so added). However, nothing in Sch 3A is to be taken to prejudice any right or power of Her Majesty's government: Sch 3A para 23 (as so added).

A direction under the Merchant Shipping Act 1995 Sch 3A para 1 or under Sch 3A para 2 (see the text and notes 27-37), in so far as it relates to a risk of pollution, may have effect in respect of a ship only if it is a United Kingdom ship, or is in United Kingdom waters or an area of the sea specified under s 129(2)(b): Sch 3A para 17 (as so added). For these purposes, 'pollution' means significant pollution in the United Kingdom, United Kingdom waters or an area of the sea specified under s 129(2)(b): Sch 3A para 22(1) (as so added). As to the meaning of 'United Kingdom ship' see PARA 230; as to the meaning of 'ship' see PARA 229; as to the meaning of 'United Kingdom' see PARA 17 note 3; and as to the meaning of 'United Kingdom waters' see PARA 48 note 10. The reference to an area of the sea specified under s 129(2)(b) is to an area of sea (so specified by order) above any of the areas for the time being designated under the Continental Shelf Act 1964 s 1(7) (as to which see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636) as waters within which the jurisdiction and rights of the

United Kingdom are exercisable in accordance with the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941) (the 'United Nations Convention on the Law of the Sea 1982') (as to which see PARA 10) Pt XII (arts 192-237) (protection and preservation of the marine environment): see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 402 et seq.

Her Majesty may by Order in Council provide that a direction under the Merchant Shipping Act 1995 Sch 3A para 1 or under Sch 3A para 2, in so far as it relates to a risk of pollution, is to have effect in respect of a ship which is not a United Kingdom ship and is not in United Kingdom waters or an area of the sea specified under s 129(2)(b): Sch 3A para 18(1) (as so added). Such an order may be expressed to apply generally or only in specified circumstances, may make different provision for different circumstances, may provide for Sch 3A to have effect in cases to which the Order in Council applies with specified modifications, and may contain transitional or consequential provision (including provision amending an enactment): Sch 3A para 18(2) (as so added).

A direction under Sch 3A para 1 or under Sch 3A para 2, in so far as it relates to a risk of safety, may have effect in respect of a ship only if it is in United Kingdom waters and it is not a qualifying foreign ship, or if it is in United Kingdom waters and it is a qualifying foreign ship which in the Secretary of State's opinion is exercising neither the right of innocent passage nor the right of transit passage through straits used for international navigation: Sch 3A para 19 (as so added). For these purposes, 'risk to safety' means a risk to the safety of persons, property or anything navigating in or using United Kingdom waters: Sch 3A para 22(1) (as so added). As to the meaning of 'qualifying foreign ship' see PARA 19; as to the meaning of 'right of transit passage' see PARA 68 note 11; and as to the meaning of 'straits used for international navigation' see PARA 68 note 12.

A direction may not be given under Sch 3A para 1(2)(a)-(d) (see heads (1) to (4) in the text) or under Sch 3A para 3 (see the text and notes 38-48) in respect of a ship of Her Majesty's Navy or a government ship: Sch 3A para 21 (as so added). As to the meaning of 'government ship' see PARA 20 note 3.

A direction under Sch 3A may be varied or revoked by a further direction: Sch 3A para 10(1) (as so added). If the Secretary of State thinks that such a direction is wholly or partly no longer necessary for the purpose for which it was given, he must vary or revoke the direction as soon as is reasonably practicable: Sch 3A para 10(2) (as so added). Where the Secretary of State has given such a direction to a person he must consider any representations about varying or revoking the direction which are made to him by that person: Sch 3A para 10(3) (as so added).

3 For these purposes, 'accident' means a collision of ships, a stranding, another incident of navigation or another event (whether on board a ship or not) which results in material damage to a ship or its cargo or in an imminent threat of such material damage: Merchant Shipping Act 1995 Sch 3A para 22(1) (as added: see note 2).

4 Merchant Shipping Act 1995 Sch 3A para 1(1)(a) (as added: see note 2).

5 Merchant Shipping Act 1995 Sch 3A para 1(1)(b) (as added: see note 2). For these purposes, 'hazardous substance' means oil within the meaning given by s 151(1) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 425 NOTE 1), any other substance which creates a hazard to human health, harms living resources or marine life, damages amenities or interferes with lawful use of the sea, and any other substance prescribed by order of the Secretary of State: Sch 3A para 22(1), (2) (as so added). As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41. At the date at which this volume states the law, no such regulations had been made under Sch 3A but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Prevention of Pollution: Substances Other than Oil) (Intervention) Order 1997, SI 1997/1869, takes effect as if made under the Merchant Shipping Act 1995 Sch 3A para 22(2). Accordingly, the substances prescribed for the purposes of Sch 3A para 22(2) (substances other than oil) are those listed in the Merchant Shipping (Prevention of Pollution: Substances Other than Oil) (Intervention) Order 1997, SI 1997/1869, art 2, Schedule.

6 Merchant Shipping Act 1995 Sch 3A para 1(1)(c) (as added: see note 2). As to action which may be taken in lieu of a safety direction see PARA 687; and as to liabilities in respect of action taken in accordance with a safety direction see PARA 688.

7 Merchant Shipping Act 1995 Sch 3A para 1(2)(a) (as added: see note 2). For these purposes, 'owner', in relation to the ship to or in which an accident has occurred, includes its owner at the time of the accident: Sch 3A para 22(1) (as so added).

8 Merchant Shipping Act 1995 Sch 3A para 1(2)(b) (as added: see note 2).

9 Merchant Shipping Act 1995 Sch 3A para 1(2)(c) (as added: see note 2). As to the meaning of 'master' see PARA 424.

10 Merchant Shipping Act 1995 Sch 3A para 1(2)(d) (as added: see note 2). For these purposes, 'pilot' means a person who does not belong to a ship but who has the conduct of it: Sch 3A para 22(1) (as so added).

11 Merchant Shipping Act 1995 Sch 3A para 1(2)(da) (Sch 3A as added (see note 2); Sch 3A para 1(2)(da) added by SI 2004/2110).

12 Merchant Shipping Act 1995 Sch 3A para 1(2)(e) (as added: see note 2).

13 Merchant Shipping Act 1995 Sch 3A para 1(2)(f) (as added: see note 2).

14 For these purposes, 'harbour authority' has the meaning given by the Merchant Shipping Act 1995 s 151(1) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA NOTE 6): Sch 3A para 22(1) (as added: see note 2).

15 Merchant Shipping Act 1995 Sch 3A para 1(2)(g) (as added: see note 2). For these purposes, 'harbour master' includes a dock master or pier master, and any person specially appointed by a harbour authority for the purpose of enforcing the provisions of Sch 3A in relation to the harbour: Sch 3A para 22(1) (as so added).

16 Merchant Shipping Act 1995 Sch 3A para 1(3)(a) (as added: see note 2). For these purposes, 'action' includes omission: Sch 3A para 22(1) (as so added).

17 Merchant Shipping Act 1995 Sch 3A para 1(3)(b) (as added: see note 2).

18 Merchant Shipping Act 1995 Sch 3A para 1(3)(c) (as added: see note 2).

19 Merchant Shipping Act 1995 Sch 3A para 1(3)(d) (as added: see note 2).

20 Merchant Shipping Act 1995 Sch 3A para 1(3)(e) (as added: see note 2).

21 Merchant Shipping Act 1995 Sch 3A para 1(4)(a) (as added: see note 2).

22 Merchant Shipping Act 1995 Sch 3A para 1(4)(b) (as added: see note 2).

23 Merchant Shipping Act 1995 Sch 3A para 1(4)(c) (as added: see note 2).

24 Merchant Shipping Act 1995 Sch 3A para 1(4)(d) (as added: see note 2).

25 Merchant Shipping Act 1995 Sch 3A para 1(4)(e) (as added: see note 2).

26 Merchant Shipping Act 1995 Sch 3A para 1(4)(f) (as added: see note 2).

27 Merchant Shipping Act 1995 Sch 3A para 2(1)(a) (as added: see note 2).

28 Merchant Shipping Act 1995 Sch 3A para 2(1)(b) (as added: see note 2).

29 Merchant Shipping Act 1995 Sch 3A para 2(1)(c) (as added: see note 2).

30 Merchant Shipping Act 1995 Sch 3A para 2(2) (as added: see note 2). For these purposes, a person is in charge of land or premises if he is wholly or partly able to control the use made of the land or premises; 'coastal' means adjacent to or accessible from United Kingdom waters over which the public is permitted to navigate: Sch 3A para 2(3) (as so added). As to directions given under Sch 3A para 2 see note 2.

31 Merchant Shipping Act 1995 Sch 3A para 2(6) (as added: see note 2).

32 Merchant Shipping Act 1995 Sch 3A para 2(4) (as added: see note 2).

33 Merchant Shipping Act 1995 Sch 3A para 2(5)(a) (as added: see note 2).

34 Merchant Shipping Act 1995 Sch 3A para 2(5)(b) (as added: see note 2).

35 Merchant Shipping Act 1995 Sch 3A para 2(5)(c) (as added: see note 2).

36 Is a direction under the Merchant Shipping Act 1995 Sch 3A para 2: see Sch 3A para 13 (as added: see note 2).

37 Merchant Shipping Act 1995 Sch 3A para 13 (as added: see note 2).

38 A direction under the Merchant Shipping Act 1995 Sch 3A para 3 may have effect in respect of a ship only if it is in United Kingdom waters and it is not a qualifying foreign ship, or if it is United Kingdom waters and is a qualifying foreign ship which in the Secretary of State's opinion is exercising neither the right of innocent passage nor the right of transit passage through straits used for international navigation: Sch 3A para 20(1) (as added: see note 2). See also note 48.

39 Merchant Shipping Act 1995 Sch 3A para 3(1)(a) (as added: see note 2).

40 Merchant Shipping Act 1995 Sch 3A para 3(1)(b) (as added: see note 2).

41 Merchant Shipping Act 1995 Sch 3A para 3(1)(c) (as added: see note 2).

42 Merchant Shipping Act 1995 Sch 3A para 3(2)(a) (as added: see note 2).

43 Merchant Shipping Act 1995 Sch 3A para 3(2)(b) (as added: see note 2).

44 Merchant Shipping Act 1995 Sch 3A para 3(2)(c) (as added: see note 2).

45 Merchant Shipping Act 1995 Sch 3A para 3(3)(a) (as added: see note 2).

46 Merchant Shipping Act 1995 Sch 3A para 3(3)(b) (as added: see note 2).

47 Merchant Shipping Act 1995 Sch 3A para 3(3)(c) (as added: see note 2).

48 Merchant Shipping Act 1995 Sch 3A para 3(3)(d) (as added: see note 2). However, a direction may not be given under Sch 3A para 3(3)(d) in respect of a United Kingdom ship: Sch 3A para 20(2) (as so added).

49 Ie for the purpose of serving a direction under the Merchant Shipping Act 1995 Sch 3A: see Sch 3A para 12 (as added: see note 2).

50 Merchant Shipping Act 1995 Sch 3A para 12 (as added: see note 2).

51 Ie a direction under the Merchant Shipping Act 1995 Sch 3A: see Sch 3A para 11(1) (as added: see note 2).

52 Ie the Companies Act 1985 s 725 (service on company) (see **COMPANIES** vol 14 (2009) PARA 671 et seq): see Sch 3A para 11(1) (as added: see note 2).

53 Ie the Companies Act 1985 s 695 (service on overseas companies) (see **COMPANIES** vol 15 (2009) PARA 1836): see Sch 3A para 11(1) (as added: see note 2).

54 Merchant Shipping Act 1995 Sch 3A para 11(1) (as added: see note 2).

55 Merchant Shipping Act 1995 Sch 3A para 11(2) (as added: see note 2).

56 Ie under the Merchant Shipping Act 1995 Sch 3A: see Sch 3A para 5 (as added: see note 2).

57 Merchant Shipping Act 1995 Sch 3A para 5(a) (as added: see note 2).

58 See the Merchant Shipping Act 1995 Sch 3A para 6; and PARA 1192.

59 Merchant Shipping Act 1995 Sch 3A para 5(b) (as added: see note 2).

60 Ie under the Merchant Shipping Act 1995 Sch 3A: see Sch 3A para 7; and PARA 1192.

61 See the Merchant Shipping Act 1995 Sch 3A para 7; and PARA 1192.

UPDATE

686 Secretary of State's power to give safety directions in respect of a ship

TEXT AND NOTES 51-55--Where the Secretary of State (1) proposes to give a direction under the Merchant Shipping Act 1995 Sch 3A to a company or other body, and (2) thinks that the Companies Act 2006 s 1139 (see **COMPANIES** vol 15 (2009) PARA 1836) does not apply, the direction may be served in such manner as the Secretary of State

thinks most suitable: Merchant Shipping Act 1995 Sch 3A para 11 (substituted by SI 2009/1941).

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687. Action taken in lieu of safety direction.

Where the Secretary of State¹ thinks that circumstances exist which would entitle him to give a safety direction in respect of a ship², but that the giving of a direction would not be likely to achieve a sufficient result³, or where he has given such a direction⁴ but, in his opinion, the direction has not achieved a sufficient result⁵, he may take such action as appears to him necessary or expedient for the purpose for which the direction could have been given or was given⁶. In particular, the Secretary of State may:

- 826 (1) authorise a person to enter land or make use of facilities⁷;
- 827 (2) do or authorise a person to do anything which the Secretary of State could require a person to do by a direction⁸;
- 828 (3) authorise a person to assume control of a ship⁹;
- 829 (4) make arrangements or authorise the making of arrangements for the sinking or destruction of a ship¹⁰.

If a person intentionally obstructs another person who is taking such action¹¹, that first-named person commits an offence¹².

1 As to the Secretary of State see PARA 38.

2 I.e. a direction under the Merchant Shipping Act 1995 s 108A(1), Sch 3A (see PARA 686): see Sch 3A para 4(1) (s 108A, Sch 3A added by the Marine Safety Act 2003 s 1(1), (2), Sch 1). As to the meaning of 'ship' see PARA 229. As to the Secretary of State's power to make directions under the Merchant Shipping Act 1995 generally see PARA 41; and as to directions made under Sch 3A specifically see PARA 686.

3 Merchant Shipping Act 1995 Sch 3A para 4(1) (as added: see note 2).

4 I.e. under the Merchant Shipping Act 1995 s 108A(1), Sch 3A (see PARA 686): see Sch 3A para 4(2) (as added: see note 2).

5 Merchant Shipping Act 1995 Sch 3A para 4(2) (as added: see note 2).

6 Merchant Shipping Act 1995 Sch 3A para 4(3) (as added: see note 2). As to liabilities in respect of action taken in lieu of a safety direction see PARA 688.

7 Merchant Shipping Act 1995 Sch 3A para 4(4)(a) (as added: see note 2).

8 Merchant Shipping Act 1995 Sch 3A para 4(4)(b) (as added: see note 2).

9 Merchant Shipping Act 1995 Sch 3A para 4(4)(c) (as added: see note 2).

10 Merchant Shipping Act 1995 Sch 3A para 4(4)(d) (as added: see note 2).

11 I.e. who is acting by virtue of the Merchant Shipping Act 1995 Sch 3A para 4 (see the text and notes 1-10): see Sch 3A para 7; and PARA 1192.

12 See the Merchant Shipping Act 1995 Sch 3A para 7; and PARA 1192.

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688. Liabilities in respect of action taken in accordance with, or in lieu of, a safety direction.

Where action ('remedial action') taken in accordance with a safety direction¹, or taken in lieu of such a direction², either:

- 830 (1) was not reasonably necessary for the purpose for which the direction was given³; or
- 831 (2) caused loss or damage which could not be justified by reference to that purpose⁴,

the Secretary of State⁵ must pay compensation to any person who suffered loss or damage as a result of the remedial action (whether it was taken by him or someone else)⁶ and who applies to him for compensation⁷. In considering what is reasonably necessary or justifiable for the purposes of heads (1) and (2) above, account must be taken of⁸:

- 832 (a) the extent of the risk to safety⁹ or threat of pollution¹⁰ which the direction was intended to address¹¹;
- 833 (b) the likelihood of the remedial action being effective¹²; and
- 834 (c) the extent of the loss or damage caused by the remedial action¹³.

Where a safety direction is given in respect of a ship¹⁴ to a person in respect of land or premises¹⁵, or where the Secretary of State¹⁶ takes, or authorises action, in lieu of such a direction¹⁷, the following expenses may be recovered¹⁸:

- 835 (i) the person to whom such a direction is given is entitled to recover the costs of his compliance with the direction from the ship's owner¹⁹;
- 836 (ii) a person in charge of coastal land or premises is entitled to recover from the ship's owner costs incurred by him as a result of action taken in lieu of a direction²⁰ in relation to that land or premises²¹;
- 837 (iii) the Secretary of State is entitled to recover from the owner of the ship: (A) costs incurred in connection with the giving of a direction²²; (B) costs incurred in connection with action taken in lieu of such a direction²³; (C) costs incurred by the Secretary of State in making payments to a person on account of sums recoverable by that person under head (i) or (ii) above²⁴.

The Admiralty jurisdiction of the High Court²⁵ includes jurisdiction to hear and determine any claim so arising in relation to such expenses²⁶ or in relation to such compensation²⁷.

Where action is taken in respect of a ship which is under arrest (or in respect of anything in a ship which is under arrest), being action duly taken in accordance with a safety direction²⁸, or taken in lieu of such a direction²⁹, the action does not constitute contempt of court and does not give rise to civil liability on the part of the Admiralty Marshal³⁰.

¹ ie a direction under the Merchant Shipping Act 1995 s 108A(1), Sch 3A (see PARA 686): see Sch 3A para 14(1) (s 108A, Sch 3A added by the Marine Safety Act 2003 s 1(1), (2), Sch 1). As to the Secretary of State's

power to make directions under the Merchant Shipping Act 1995 generally see PARA 41; and as to directions made under Sch 3A specifically see PARA 686.

2 le by a person who is acting by virtue of the Merchant Shipping Act 1995 Sch 3A para 4 (see PARA 687): see Sch 3A para 14(1) (as added: see note 1).

3 Merchant Shipping Act 1995 Sch 3A para 14(1)(a) (as added: see note 1).

4 Merchant Shipping Act 1995 Sch 3A para 14(1)(b) (as added: see note 1).

5 As to the Secretary of State see PARA 38.

6 Merchant Shipping Act 1995 Sch 3A para 14(2)(a) (as added: see note 1).

7 Merchant Shipping Act 1995 Sch 3A para 14(2)(b) (as added: see note 1).

8 Merchant Shipping Act 1995 Sch 3A para 14(3) (as added: see note 1).

9 As to the meaning of 'risk to safety' for these purposes see PARA 686 note 2.

10 As to the meaning of 'pollution' see PARA 686 note 2.

11 Merchant Shipping Act 1995 Sch 3A para 14(3)(a) (as added: see note 1).

12 Merchant Shipping Act 1995 Sch 3A para 14(3)(b) (as added: see note 1).

13 Merchant Shipping Act 1995 Sch 3A para 14(3)(c) (as added: see note 1).

14 As to the meaning of 'ship' see PARA 229.

15 Merchant Shipping Act 1995 Sch 3A para 15(1)(a) (as added: see note 1). The text refers to the circumstance where a direction is given to a person in respect of a ship under Sch 3A para 2 (see PARA 686): see Sch 3A para 15(1)(a) (as so added).

16 le relying on the Merchant Shipping Act 1995 Sch 3A para 4 (see PARA 687): see Sch 3A para 15(1)(b) (as added: see note 1).

17 Merchant Shipping Act 1995 Sch 3A para 15(1)(b) (as added: see note 1).

18 A right under any of heads (i) to (iii) in the text permits the recovery of costs only in so far as they are not recoverable under another enactment, by virtue of an agreement, or under the law relating to salvage: Merchant Shipping Act 1995 Sch 3A para 15(6) (as added: see note 1).

19 Merchant Shipping Act 1995 Sch 3A para 15(2) (as added: see note 1). The Secretary of State may make payments to a person on account of sums recoverable by that person under Sch 3A para 15(2): see Sch 3A para 15(4) (as so added). As to the meaning of 'owner' for these purposes see PARA 686 note 7.

20 le action taken by virtue of the Merchant Shipping Act 1995 Sch 3A para 4 (see PARA 687): see Sch 3A para 15(3) (as added: see note 1).

21 Merchant Shipping Act 1995 Sch 3A para 15(3) (as added: see note 1). The Secretary of State may make payments to a person on account of sums recoverable by that person under Sch 3A para 15(3): see Sch 3A para 15(4) (as so added).

22 Merchant Shipping Act 1995 Sch 3A para 15(5)(a) (as added: see note 1).

23 Merchant Shipping Act 1995 Sch 3A para 15(5)(b) (as added: see note 1). Head (b) in the text refers to costs incurred in connection with action taken under Sch 3A para 4 (see PARA 687): see Sch 3A para 15(5)(b) (as so added).

24 Merchant Shipping Act 1995 Sch 3A para 15(5)(c) (as added: see note 1). The text refers to costs incurred by the Secretary of State in making payments to a person under Sch 3A para 15(4) (see notes 19, 21): see Sch 3A para 15(5)(c) (as so added).

25 As to the Admiralty jurisdiction of the High Court generally see PARA 85 et seq.

26 le a claim arising under the Merchant Shipping Act 1995 Sch 3A para 15 (see notes 14-24): see Sch 3A para 16 (as added: see note 1).

27 Merchant Shipping Act 1995 Sch 3A para 16 (as added: see note 1). The text refers to a claim for compensation arising under Sch 3A para 14 (see notes 1-13): see Sch 3A para 16 (as so added).

28 le a direction under the Merchant Shipping Act 1995 Sch 3A (see PARA 686): see Sch 3A para 24(1) (as added: see note 1).

29 le by a person who is acting by virtue of the Merchant Shipping Act 1995 Sch 3A para 4 (see PARA 687): see Sch 3A para 24(1) (as added: see note 1).

30 Merchant Shipping Act 1995 Sch 3A para 24(1) (as added: see note 1). As to the Admiralty Marshal see PARA 160 note 6.

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(5) PORT STATE CONTROL

(i) In general

689. EC Council Directive concerning port state control.

A comprehensive proposal was made by the EC Commission in June 1980 for a Directive on the application to ships using ports of the European Community of international standards relating to the safety of sea transport and the prevention of pollution¹. Although the merits of the measure were generally conceded, the member states were not prepared to see the measure adopted² but the proposal did have the effect of stimulating the adoption in 1982 of a Memorandum of Understanding ('MOU') on Port State Control ('PSC') of ships, which contained many of the elements of the proposal³.

Concerns persisted, however, about serious failures on the part of flag states to implement and enforce international standards, and these concerns, together with the requirement for compliance with such standards to be ensured by the port state, and the experience gained during the operation of the 1982 Memorandum of Understanding, led to the formulation and adoption of an EC Council Directive of 19 June 1995 on port state control of shipping⁴. The stated purpose of the Directive is to help drastically to reduce sub-standard shipping in the waters under the jurisdiction of member states by: (1) increasing compliance with international and relevant EC legislation on maritime safety, protection of the marine environment and living and working conditions on board ships of all flags⁵; and (2) establishing common criteria for control of ships by the port state and harmonising procedures on inspection and detention, taking proper account of the commitments made by the maritime authorities of the member states under the 1982 Memorandum of Understanding on Port State Control⁶.

1 Ie Proposal for a Council Directive concerning the enforcement, in respect of shipping using community ports, of international standards for shipping safety and pollution prevention (OJ C192, 30.07.1980, p 8). The Directive so proposed would have required member states to ensure the identification of ships which were below the international standards contained in certain specified Conventions when they entered their ports and to ensure the correction of any defects discovered: see Proposal for a Council Directive (OJ C192, 30.07.1980, p 8).

2 Ie because member states were reluctant to allow the European Community to acquire competence in the areas involved, which would in effect have given the European Community an increased role in relation to the international Conventions concerned. Concerns of this nature had hindered the development of early EC policy on maritime and shipping issues whose coverage was co-terminous with that of international Conventions: see PARA 15.

3 See the Memorandum of Understanding ('MOU') on Port State Control ('PSC') (Paris, 26 January 1982). The maritime authorities of all the member states at that time, except Luxembourg, participated in the Memorandum, together with those of Finland, Norway, Portugal, Spain and Sweden.

4 Ie EC Council Directive 95/21 of 19 June 1995 (OJ L157, 07.07.1995, p 1) on port state control of shipping (amended by EC Council Directive 98/25 of 27 April 1998 (OJ L133, 07.05.1998, p 19); EC Commission Directive 98/42 of 19 June 1998 (OJ L184, 27.06.1998, p 40); EC Commission Directive 1999/97 of 13 December 1999 (OJ L331, 23.12.1999, p 67); EC Directive 2001/106 of the European Parliament and of the Council of 19 December 2001 (OJ L19, 22.01.2002, p 17); and EC Directive 2002/84 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 53)). EC Council Directive 95/21 (OJ L157, 07.07.1995, p 1) (as so amended) is implemented in the United Kingdom by the Merchant Shipping (Port State Control) Regulations

1995, SI 1995/3128, Pt I (regs 1-18) (see PARA 690 et seq) (see reg 2(1) (substituted by SI 2003/1636)). Community measures also have been taken to enhance ship and port facility security: see EC Regulation 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJ L129, 29.04.2004, p 6); and PARA 708.

5 EC Council Directive 95/21 (OJ L157, 07.07.1995, p 1) art 1.

6 EC Council Directive 95/21 (OJ L157, 07.07.1995, p 1) art 1.

UPDATE

689-692 EC Council Directive concerning port state control etc

From 1 January 2011, Directive 95/21 replaced: European Parliament and EC Council Directive 2009/16 on port state control (OJ L131, 28.5.2009, p 57); references to the repealed directive should be construed as references to Directive 2009/16 and read in accordance with the correlation table in Annex XVI: art 37.

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(ii) Shipping using EC Ports etc

690. Application of provisions on port state control.

The provisions on port state control¹ apply to any sea-going ship²:

- 838 (1) in a port in the United Kingdom³ or at an offshore installation⁴; or
- 839 (2) anchored off such a port or such an installation (except in waters which are neither United Kingdom waters⁵ nor designated waters)⁶,

and its crew⁷.

However, the provisions on port state control⁸ do not apply to⁹:

- 840 (a) a British ship¹⁰;
- 841 (b) a fishing vessel¹¹;
- 842 (c) a ship of war¹²;
- 843 (d) a naval auxiliary¹³;
- 844 (e) a wooden ship of a primitive build¹⁴;
- 845 (f) a government ship used for non-commercial purposes¹⁵; or
- 846 (g) a pleasure yacht not engaged in trade¹⁶.

In the case of a ship below 500 gross tonnage (to the extent to which a Convention¹⁷ does not apply) an inspector¹⁸ must, without prejudice to any other powers under the Merchant Shipping Act 1995 or statutory instruments made under it, take such action as may be necessary to ensure that the ship is not clearly hazardous to safety, health or the environment¹⁹.

When inspecting a ship for port state control purposes²⁰, no more favourable treatment is to be given to a ship flying the flag of a state which is not a party to a Convention or to the crew of such a ship than that given to a ship flying the flag of a state which is a party to that Convention or to the crew of such a ship²¹.

A power of inspection or detention conferred by a Convention enactment²² is also exercisable in relation to a ship which is²³:

- 847 (i) at any offshore installation²⁴; or
- 848 (ii) anchored off an offshore installation or a port in the United Kingdom²⁵,

where the ship is one to which the port state control provisions²⁶ apply²⁷.

Where such a ship²⁸ is detained under a Convention enactment²⁹ or where the master of such a ship is served with a detention notice under such an enactment³⁰, the provisions of the Merchant Shipping Act 1995 relating to enforcing the detention of ships³¹ apply in relation to the ship, but with modifications³².

¹ ie the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18) (see PARA 691 et seq): see reg 3(1). The Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I,

implement EC Council Directive 95/21 of 19 June 1995 (OJ L157, 07.07.1995, p 1) on port state control of shipping (as to which see PARA 689).

2 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(1). For these purposes, 'ship' includes hovercraft: reg 2(2).

3 As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(1)(a). For these purposes, 'offshore installation' means a fixed or floating platform operating in any area for the time being designated under the Continental Shelf Act 1964 s 1(7) (as to which see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636): Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2).

5 For these purposes, 'United Kingdom waters' has the meaning given by the Merchant Shipping Act 1995 s 313(2)(a) (see PARA 48 note 10): Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(7).

6 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(1)(b). For these purposes, 'designated waters' means areas of sea above any of the areas for the time being designated under the Continental Shelf Act 1964 s 1(7) (as to which see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636): Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(7).

7 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(1).

8 Ie the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (see PARA 691 et seq): see reg 3(2).

9 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(2).

10 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(2)(a). For these purposes, 'British ship' has the meaning given by the Merchant Shipping Act 1995 s 1 (see PARA 230): Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2).

11 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(2)(b). For these purposes, 'fishing vessel' means a vessel used for catching fish, whales, seals, walrus or other living resources of the sea: reg 2(2).

12 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(2)(c).

13 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(2)(d).

14 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(2)(e).

15 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(2)(f).

16 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(2)(g).

17 For these purposes, 'Conventions' means:

953 (1) the International Convention on Load Lines (London, 5 April to 4 July 1966; TS 58 (1968); Cmnd 3708) (as to which see PARA 8);

954 (2) the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874) ('SOLAS') (as to which see PARA 8);

955 (3) the International Convention for the Prevention of Pollution from Ships (London, 8 October to 2 November 1973; Misc 26 (1974); Cmnd 5748), with Protocol (London, 1 June 1978 to 31 May 1979; Misc 27 (1978); Cmnd 7347) ('MARPOL') (as to which see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 404);

956 (4) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (London, 1 December 1978 to 30 November 1979; TS 50 (1984); Cmnd 9266) ('STCW78') (as to which see PARA 8);

957 (5) the Convention on the International Regulations for Preventing Collisions at Sea 1972 (London, 20 October 1972; TS 77 (1977); Cmnd 3678) ('COLREG') (as to which see PARA 8);

958 (6) the International Convention on Tonnage Measurement of Ships 1969 (London, 23 June to 23 December 1969; TS 50 (1982); Cmnd 8716) ('ITC69') (as to which see PARA 8);

959 (7) the Merchant Shipping (Minimum Standards) Convention 1976 (ILO No 147) (Cmnd 7183) (as to which see PARA 8);

960 (8) the International Convention on Civil Liability for Oil Pollution Damage (Brussels, 29 November 1969 to 31 December 1970; TS 106 (1975); Cmnd 6183) with Protocol (London, 27 November 1992) (as to which see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 441 et seq),

together with the Protocols and amendments to those Conventions and related Codes of mandatory status, in force at 22 July 2003, and thereafter in their up-to-date versions in so far as those versions: (a) relate to all or any of the purposes set out in the Merchant Shipping Act 1995 s 85(1) (as to which see PARA 591); (b) are considered by the Secretary of State to be relevant from time to time; and (c) are specified in a Merchant Shipping Notice; and a reference to a Convention is a reference to any of the Conventions: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2) (definition amended by SI 2003/1636). 'Merchant Shipping Notice' means a Notice described as such, issued by the Maritime and Coastguard Agency (an executive agency of the Department for Transport); and reference to a specific Merchant Shipping Notice includes a reference to any document amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2) (definition amended by SI 1998/1433; SI 2003/1636). As to the Secretary of State see PARA 38; and as to the Maritime and Coastguard Agency see PARA 56.

18 For these purposes, 'inspector' means a person duly authorised by the Secretary of State to carry out inspections required by the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128: reg 2(2). If a person obstructs an inspector or any person assisting the inspector, he is guilty of an offence: see PARA 1195.

19 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(3). In his application of reg 3(3), an inspector must be guided by the MOU Annex 1: see Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(3). For these purposes, 'MOU' means the Memorandum of Understanding on Port State Control (Paris, 26 January 1982) (as to which see PARA 689), as it stands on 22 July 2003, and thereafter in its up-to-date version in so far as that version: (1) relates to all or any of the purposes set out in the Merchant Shipping Act 1995 s 85(1) (as to which see PARA 591); (2) is considered by the Secretary of State to be relevant from time to time; and (3) is specified in a Merchant Shipping Notice: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2) (definition amended by SI 2003/1636).

20 In pursuant to the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, regs 5-8 (see PARA 692 et seq): see reg 3(4).

21 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(4).

22 For these purposes, 'Convention enactments' means the Merchant Shipping Act 1995 and statutory instruments made, or treated as made, under the 1995 Act (including statutory instruments made, or treated as made, under an order under the 1995 Act) which implement the Conventions: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2).

23 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(5).

24 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(5)(a).

25 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(5)(b).

26 In the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (see PARA 691 et seq): see reg 3(5).

27 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(5).

28 In a ship to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (see PARA 691 et seq) applies: see reg 3(6)(a).

29 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(6)(a).

30 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(6)(b).

31 In the Merchant Shipping Act 1995 s 284 (see PARA 1253): see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(6).

32 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(6). In particular, the Merchant Shipping Act 1995 s 284 (see PARA 1253) applies in relation to the ship as if any reference to proceeding to sea were a reference to proceeding contrary to the detention notice and references to sending or taking to sea were construed accordingly: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 3(6).

UPDATE

689-692 EC Council Directive concerning port state control etc

From 1 January 2011, Directive 95/21 replaced: European Parliament and EC Council Directive 2009/16 on port state control (OJ L131, 28.5.2009, p 57); references to the repealed directive should be construed as references to Directive 2009/16 and read in accordance with the correlation table in Annex XVI: art 37.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/7. SAFETY AND SECURITY AT SEA/(5) PORT STATE CONTROL/(ii) Shipping using EC Ports etc/691. The competent authority.

691. The competent authority.

The Maritime and Coastguard Agency¹ is designated the competent authority for the United Kingdom² for the purpose of the provisions on port state control³.

In relation to any other member state⁴, 'competent authority' means the national maritime administration maintained by that state for the inspection of ships⁵.

In relation to a state other than a member state, 'competent authority' means any authority designated as such by that state⁶.

1 As to the Maritime and Coastguard Agency see PARA 56.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 4(1) (amended by virtue of SI 1998/1433). The text refers to the purposes of EC Council Directive 95/21 of 19 June 1995 (OJ L157, 07.07.1995, p 1) on port state control of shipping (as to which see PARA 689) and the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18) (as to which see PARAS 690, 692 et seq), which implement the Directive: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 4(1) (as so amended).

4 For these purposes, 'member state' includes an EEA state: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2) (definition added by SI 1998/2198; amended by SI 2003/1636). 'EEA state' means a state which is a contracting party to the EEA Agreement; and 'EEA Agreement' means the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183): Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2) (both definitions added by SI 2003/1636).

5 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 4(2). As to the meaning of 'ship' see PARA 690 note 2.

6 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 4(3).

UPDATE

689-692 EC Council Directive concerning port state control etc

From 1 January 2011, Directive 95/21 replaced: European Parliament and EC Council Directive 2009/16 on port state control (OJ L131, 28.5.2009, p 57); references to the repealed directive should be construed as references to Directive 2009/16 and read in accordance with the correlation table in Annex XVI: art 37.

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692. Inspection commitments.

The Maritime and Coastguard Agency¹ must² ensure that an inspection³ is carried out on any ship⁴ which is not subject to an expanded inspection⁵ and has a target factor greater than 50 in the Sirenac information system⁶, provided that a period of at least one month has elapsed since the last inspection carried out in a port in the MOU region⁷.

In selecting other ships for inspection, the Maritime and Coastguard Agency must determine the order of priority as follows⁸:

- 849 (1) the first ships to be selected for inspection must be those listed in Part I of Annex 1 to the specified Merchant Shipping Notice⁹, irrespective of their target factor¹⁰;
- 850 (2) the ships listed in Part II of Annex 1 to the specified Merchant Shipping Notice¹¹ must be selected in decreasing order, depending on the order of priority resulting from the value of their target factor ranges as referred to in the Sirenac information system¹².

For the purposes of carrying out any such inspection¹³, the inspector¹⁴ must consult the public and private databases relating to ship inspection accessible through the Equasis information system¹⁵.

The total number of inspections of such ships¹⁶, including ships subject to an expanded inspection¹⁷, which must be carried out annually by the Maritime and Coastguard Agency must correspond to at least 25 per cent of the average annual number of individual ships which entered United Kingdom ports, calculated on the basis of the three most recent calendar years for which statistics are available¹⁸.

However, the Marine Safety Agency must refrain from inspecting a ship which has been inspected by the competent authority¹⁹ of any member state²⁰ within the previous six months²¹, provided that:

- 851 (a) the ship is not in a category listed in Annex 1 to the specified Merchant Shipping Notice²²; and
- 852 (b) no deficiencies have been reported following a previous inspection²³;
- 853 (c) no clear grounds²⁴ exist for carrying out an inspection²⁵; and
- 854 (d) the ship is not covered by the provisions which make it liable to inspection, being a ship which is not subject to an expanded inspection and has a target factor greater than 50 in the Sirenac information system²⁶.

1 As to the Maritime and Coastguard Agency see PARA 56.

2 Ie subject to the provisions of the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7A (procedure in case certain ships cannot be inspected) (see PARA 695): see reg 5(2)(a) (reg 5 substituted by SI 2003/1636).

3 Ie in accordance with the provisions of the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 6 (see PARA 693): see reg 5(2)(a) (as substituted: see note 2).

4 As to the meaning of 'ship' see PARA 690 note 2. As to the ships to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18) applies see PARA 690.

5 For these purposes, 'expanded inspection' means an inspection as specified in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7 (see PARA 694): reg 2(2).

6 For these purposes, 'Sirenac information system' means the central information system for port state inspection records established in accordance with the MOU: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2) (definition added by SI 2003/1636). As to the meaning of 'MOU' see PARA 690 note 19.

7 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(2)(a) (as substituted: see note 2). As to the procedure in case a ship cannot be inspected see PARA 695; and as to the refusal of access of a ship to ports in the United Kingdom see PARA 696.

8 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(2)(b) (as substituted: see note 2).

9 *le* Merchant Shipping Notice 1775(M) Annex I Pt I: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(2)(b)(i) (as substituted: see note 2). As to the meaning of 'Merchant Shipping Notice' see PARA 690 note 17.

10 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(2)(b)(i) (as substituted: see note 2). For these purposes, 'target factor' means the sum of the applicable target factor values as defined within the framework of the MOU: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2) (definition added by SI 2003/1636).

11 *le* in the Merchant Shipping Notice 1775(M) Annex I Pt II: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(2)(b)(ii) (as substituted: see note 2).

12 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(2)(b)(ii) (as substituted: see note 2).

13 *le* any inspection referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(2) (see the text and notes 1-12): see reg 5(3) (as substituted: see note 2).

14 As to the meaning of 'inspector' see PARA 690 note 18.

15 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(3) (as substituted: see note 2). For these purposes, 'Equasis information system' means the European information system for quality and safety related information on the world merchant fleet: reg 2(2) (definition added by SI 2003/1636).

16 *le* the ships referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(2) (see the text and notes 1-12): see reg 5(1) (as substituted: see note 2).

17 *le* the ships referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7 (see PARA 694): see reg 5(1) (as substituted: see note 2).

18 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(1) (as substituted: see note 2).

19 As to the meaning of 'competent authority' see PARA 691.

20 *le* in accordance with the EC Council Directive 95/21 of 19 June 1995 (OJ L157, 07.07.1995, p 1) on port state control of shipping (as to which see PARA 689): see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(4) (as substituted: see note 2). As to the meaning of 'member state' see PARA 691 note 4.

21 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(4) (as substituted: see note 2). The provisions of reg 5(4) do not apply to any of the operational controls specifically provided for in the Convention enactments: reg 5(5) (as so substituted). As to the meaning of 'Convention enactments' see PARA 690 note 22.

22 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(4)(a) (as substituted: see note 2). The text refers to a category of ship listed in the Merchant Shipping Notice 1775(M) Annex I: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(4)(a) (as so substituted). See note 21.

23 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(4)(b) (as substituted: see note 2). See note 21.

24 For these purposes, 'clear grounds' means evidence which, in the professional judgment of an inspector, warrants a more detailed inspection of a ship, its equipment or its crew, including in particular criteria listed in Merchant Shipping Notice 1775(M) Annex III: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2) (definition amended by SI 2003/1636). 'More detailed inspection' means an inspection where the ship, its equipment and crew as a whole or, as appropriate, parts thereof are subjected, in the circumstances specified in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 6(3) (see PARA 693), to an in-depth inspection covering the ship's construction, equipment, manning, living and working conditions and compliance with on-board operational procedures: reg 2(2).

25 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(4)(c) (as substituted: see note 2). See note 21.

26 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(4)(d) (as substituted: see note 2). Head (d) in the text refers to a ship which is not covered by reg 5(2)(a) (see the text and notes 1-7): see reg 5(4)(d) (as so substituted). See note 21.

UPDATE

689-692 EC Council Directive concerning port state control etc

From 1 January 2011, Directive 95/21 replaced: European Parliament and EC Council Directive 2009/16 on port state control (OJ L131, 28.5.2009, p 57); references to the repealed directive should be construed as references to Directive 2009/16 and read in accordance with the correlation table in Annex XVI: art 37.

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693. Inspection procedure.

In carrying out an inspection¹, the inspector² must as a minimum³:

- 855 (1) check the prescribed certificates and documents⁴ to the extent applicable⁵;
and
- 856 (2) satisfy himself of the overall condition of the ship⁶, including the engine room and accommodation and including hygienic conditions⁷.

The inspector may examine all other relevant certificates and documents⁸ which are required to be carried on board in accordance with the Convention enactments⁹.

Whenever there are clear grounds¹⁰ for believing, after such an inspection¹¹, that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention enactment, a more detailed inspection¹² must be carried out, including further checking of compliance with onboard operational requirements¹³.

The inspector must also observe the specified relevant procedures and guidelines¹⁴ for the control of ships¹⁵.

1 Ie the inspection referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5 (see PARA 692): see reg 6(1).

2 As to the meaning of 'inspector' see PARA 690 note 18.

3 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 6(1).

4 Ie the certificates and documents listed in Merchant Shipping Notice 1775(M) Annex II: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 6(1)(a) (amended by SI 2003/1636). As to the meaning of 'Merchant Shipping Notice' see PARA 690 note 17.

5 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 6(1)(a) (as amended: see note 4).

6 As to the meaning of 'ship' see PARA 690 note 2. As to the ships to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18) applies see PARA 690.

7 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 6(1)(b).

8 Ie other than those listed in Merchant Shipping Notice 1775(M) Annex II: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 6(2) (amended by SI 2003/1636).

9 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 6(2) (as amended: see note 8). As to the meaning of 'Convention enactments' see PARA 690 note 22.

10 As to the meaning of 'clear grounds' see PARA 692 note 24.

11 Ie the inspection referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 6(1), (2) (see the text and notes 1-9): see reg 6(3).

12 As to the meaning of 'more detailed inspection' see PARA 692 note 24.

13 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 6(3). As to the report that must be provided to the master on completion of any inspection see PARA 697.

14 le the relevant procedures and guidelines specified in Merchant Shipping Notice 1775(M) Annex IV: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 6(4) (amended by SI 2003/1636).

15 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 6(4) (as amended: see note 14).

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694. Mandatory expanded inspection of certain types of ship.

A ship in one of the specified categories¹ may be subject to an expanded inspection² after a period of 12 months following the last expanded inspection carried out in a port of a state signatory to the MOU³. However, if such a ship is selected for routine inspection⁴ an expanded inspection must be carried out⁵, and a routine inspection⁶ may be carried out in the period between two expanded inspections⁷.

After a period of 12 months since the last expanded inspection of a ship, the owner⁸ or master of a ship subject to an expanded inspection⁹ must communicate to the Maritime and Coastguard Agency all the required information¹⁰ before each call at a port in the United Kingdom¹¹; and any ship not complying with these requirements is subject to an expanded inspection at the port of destination¹².

The Maritime and Coastguard Agency must¹³ ensure that an expanded inspection is carried out in respect of a ship subject to such an inspection¹⁴ and which has a target factor¹⁵ of seven or more at its first visit to a port in the United Kingdom after a period of 12 months since the last expanded inspection carried out in a port of a state signatory to the MOU¹⁶.

For the purposes of carrying out an expanded inspection, the inspector¹⁷ must consult the public and private databases relating to ship inspection accessible through the Equasis information system¹⁸.

1 le a ship in one of the categories in Merchant Shipping Notice 1775(M) Annex V section A: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(1) (reg 7 substituted by SI 2003/1636). As to the meaning of 'Merchant Shipping Notice' see PARA 690 note 17. As to the meaning of 'ship' see PARA 690 note 2. As to the ships to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18) applies generally see PARA 690.

The Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7 does not apply to a ship which to the satisfaction of the Maritime and Coastguard Agency has within the previous 12 months been subject to an initial specific survey in accordance with EC Council Directive 1999/35 of 29 April 1999 (OJ L138, 01.06.1999, p 1) on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (see PARA 603) art 6 or a specific survey in accordance with art 8: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(8) (as so substituted). As to the Maritime and Coastguard Agency see PARA 56.

2 An expanded inspection must be carried out in accordance with the procedures set out in Merchant Shipping Notice 1775(M) Annex V section C: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(6) (as substituted: see note 1). As to the meaning of 'expanded inspection' see PARA 692 note 5.

3 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(1) (as substituted: see note 1). As to the meaning of 'MOU' see PARA 690 note 19. As to the procedure in case a ship cannot be inspected by the Maritime and Coastguard Agency see PARA 695; and as to the refusal of access of a ship to ports in the United Kingdom see PARA 696.

4 le in accordance with the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(2) (b) (see PARA 692): see reg 7(2) (as substituted: see note 1).

5 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(2)(a) (as substituted: see note 1).

- 6 le in accordance with the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 6 (see PARA 693): see reg 7(2)(b) (as substituted: see note 1).
- 7 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(2)(b) (as substituted: see note 1).
- 8 For these purposes, 'owner' includes, in relation to a ship, any operator, manager, charterer or agent of the ship: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2).
- 9 le a ship to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(1) (see the text and notes 1-3) applies: see reg 7(3)(a) (as substituted: see note 1).
- 10 le all the information listed in Merchant Shipping Notice 1775(M) Annex V section B: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(3)(a) (as substituted: see note 1).
- 11 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(3)(a) (as substituted: see note 1). This information must be provided at least three days before the expected time of arrival in the port or before leaving the previous port if the voyage is expected to take fewer than three days: reg 7(3)(b) (as so substituted). As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 12 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(3)(c) (as substituted: see note 1). Failure to communicate the required information as mentioned in the text is also an offence: see PARA 1195.
- 13 le subject to the provisions of the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7A (procedure in case certain ships cannot be inspected) (see PARA 695): see reg 7(4) (as substituted: see note 1).
- 14 le a ship to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(1) (see the text and notes 1-3) applies: see reg 7(4) (as substituted: see note 1).
- 15 As to the meaning of 'target factor' see PARA 692 note 10.
- 16 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(4) (as substituted: see note 1). For the purposes of calculating the target factor in reg 7(4), the target factor does not include the value applicable to ships of the categories referred to in Merchant Shipping Notice 1775(M) Annex V section A: reg 7(5) (as so substituted).
- 17 As to the meaning of 'inspector' see PARA 690 note 18.
- 18 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(7) (as substituted: see note 1). As to the meaning of 'Equasis information system' see PARA 692 note 15. As to the report that must be provided to the master on completion of any expanded inspection see PARA 697.

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695. Procedure in cases where the Maritime and Coastguard Agency is unable to inspect a ship.

In cases where, for operational reasons, the Maritime and Coastguard Agency¹ is unable to carry out a routine inspection of a ship² with a target factor of more than 50³ or a mandatory expanded inspection⁴, it must, without delay, inform the Sirenac information system⁵ that such inspection did not take place⁶; and the Maritime and Coastguard Agency must, at intervals of six months, notify such cases⁷ to the European Commission together with the reasons for not inspecting the ships concerned⁸.

During any calendar year, such cases of non-inspection must not exceed 5 per cent of the average annual number of individual ships eligible for the inspections⁹ calling at ports in the United Kingdom¹⁰, calculated on the basis of the three most recent calendar years for which statistics are available¹¹.

Where a ship, which for operational reasons was not subject to a routine inspection¹² or a mandatory expanded inspection¹³ at its previous call at a port in a member state¹⁴ (including the United Kingdom) visits a port in the United Kingdom, it must be inspected, as appropriate, by the Maritime and Coastguard Agency¹⁵.

1 As to the Maritime and Coastguard Agency see PARA 56.

2 As to the meaning of 'ship' see PARA 690 note 2. As to the ships to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18) applies generally see PARA 690.

3 I.e. as referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(2)(a) (see PARA 692): see reg 7A(1) (reg 7A added by SI 2003/1636). As to the meaning of 'target factor' see PARA 692 note 10.

4 I.e. as referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(4) (see PARA 694): see reg 7A(1) (as added: see note 3). As to the meaning of 'expanded inspection' see PARA 692 note 5.

5 As to the meaning of 'Sirenac information system' see PARA 692 note 6.

6 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7A(1) (as added: see note 3).

7 I.e. the cases referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7A(1) (see the text and notes 1-6): see reg 7A(2) (as added: see note 3).

8 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7A(2) (as added: see note 3).

9 I.e. the inspections referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7A(1) (see the text and notes 1-6): see reg 7A(3) (as added: see note 3).

10 As to the meaning of 'United Kingdom' see PARA 17 note 3.

11 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7A(3) (as added: see note 3).

12 I.e. of a type referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(2)(a) (see PARA 692): see reg 7A(4) (as added: see note 3).

13 I.e. of a type referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(4) (see PARA 694): see reg 7A(4) (as added: see note 3).

14 As to the meaning of 'member state' see PARA 691 note 4.

15 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7A(4) (as added: see note 3).
As to the report that must be provided to the master on completion of any inspection see PARA 697.

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696. Access refusal measures.

Where a ship in one of the specified categories¹:

- 857 (1) flies the flag of a state appearing in the black list as published in the annual report of the MOU² and has been detained more than twice in the preceding 24 months in a port of a state signatory to the MOU³; or
- 858 (2) flies the flag of a state described as 'high risk' or 'very high risk' in the black list referred to in head (1) above and has been detained more than once in the preceding 36 months in a port of a state signatory to the MOU⁴,

and an access refusal notice⁵ has previously been served on it, the ship must not enter any port in the United Kingdom⁶. This prohibition applies at any time after the ship has been authorised to leave the port where it has been the subject of a second or third detention as the case may be⁷. However, notwithstanding these provisions⁸, access to a specific port in the United Kingdom may be permitted by the Secretary of State⁹ in the event of force majeure or overriding safety considerations, or to reduce or minimize the risk of pollution or to have deficiencies rectified, provided adequate measures to the satisfaction of the Maritime and Coastguard Agency have been implemented by the owner¹⁰ or the master of the ship to ensure safe entry¹¹.

Where a ship in one of the specified categories¹² calls at a United Kingdom port and is detained there¹³:

- 859 (a) for the third time in the preceding 24 months if it is a ship which flies the flag of a state appearing in the black list referred to in head (1) above¹⁴; or
- 860 (b) for the second time in the preceding 36 months if it is a ship which flies the flag of a state described as 'high risk' or 'very high risk' in the said black list¹⁵,

the Maritime and Coastguard Agency must serve an access refusal notice on it¹⁶.

1. I.e. a ship falling within one of the categories of Merchant Shipping Notice 1775(M) Annex XII section A: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7B(1) (reg 7B added by SI 2003/1636). As to the meaning of 'Merchant Shipping Notice' see PARA 690 note 17. As to the meaning of 'ship' see PARA 690 note 2. As to the ships to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18) applies generally see PARA 690.

2. As to the meaning of 'MOU' see PARA 690 note 19.

3. Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7B(2)(a) (as added: see note 1).

4. Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7B(2)(b) (as added: see note 1).

5. For these purposes, 'access refusal notice' means a notice served in accordance with the procedures set out in Merchant Shipping Notice 1775(M) Annex XII section B by the Maritime and Coastguard Agency or other competent authority of the port in which the ship is detained: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2) (definition added by SI 2003/1636). As to the meaning of 'competent authority' see PARA 691. As to the Maritime and Coastguard Agency see PARA 56.

6 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7B(2) (as added: see note 1). A failure to comply as mentioned in the text is also an offence: see PARA 1195. As to the meaning of 'United Kingdom' see PARA 17 note 3.

7 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7B(3) (as added: see note 1).

8 Ie notwithstanding the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7B(2), (3) (see the text and notes 1-7): see reg 7B(5) (as added: see note 1).

9 Ie permitted in situations referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(8) (see PARA 701): see reg 7B(5) (as added: see note 1). As to the Secretary of State see PARA 38.

10 As to the meaning of 'owner' see PARA 694 note 8.

11 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7B(5) (as added: see note 1), reg 13(8) (amended by SI 1998/1433).

12 Ie a ship to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7B applies (see note 1): see reg 7B(4) (as added: see note 1).

13 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7B(4) (as added: see note 1).

14 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7B(4)(a) (as added: see note 1).

15 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7B(4)(b) (as added: see note 1).

16 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7B(4) (as added: see note 1).

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697. Report of inspector to the master.

On completion of an inspection, a more detailed inspection¹, or an expanded inspection², the inspector³ must draw up a document in the prescribed form⁴, and a copy of such report must be provided to the master of the ship⁵.

1 As to the meaning of 'more detailed inspection' see PARA 692 note 24.

2 As to the meaning of 'expanded inspection' see PARA 692 note 5.

3 As to the meaning of 'inspector' see PARA 690 note 18.

4 In accordance with the requirements of Merchant Shipping Notice 1775(M) Annex X: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 8 (reg 8 substituted by SI 2003/1636). As to the meaning of 'Merchant Shipping Notice' see PARA 690 note 17.

5 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 8 (as substituted: see note 4). As to the meaning of 'ship' see PARA 690 note 2. As to the ships to which Pt I (regs 1-18) applies generally see PARA 690.

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698. Rectification and detention where inspection reveals or confirms deficiencies.

The owner¹ must satisfy the Maritime and Coastguard Agency² that any deficiencies confirmed or revealed by any inspection³ are or will be rectified in accordance with the Conventions⁴.

In case of deficiencies which are clearly hazardous to safety, health or the environment, the inspector⁵ must detain the ship⁶, or require the stoppage of the operation⁷ in the course of which the deficiencies have been revealed, using powers of detention in Convention enactments⁸ as appropriate, or issuing a prohibition notice⁹, as the case may be¹⁰. A detention notice may:

- 861 (1) include a direction that a ship must remain in a particular place, or must move to a particular anchorage or berth¹¹; and
- 862 (2) specify circumstances when the master of the ship may move his ship from a specified place for reasons of safety or prevention of pollution¹².

The detention notice or stoppage of an operation must not be lifted until the Maritime and Coastguard Agency establishes that the ship can, subject to any necessary conditions, proceed to sea or the operation be resumed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat to or harm to the marine environment¹³.

Without prejudice to any other requirement in the Convention enactments, when exercising his professional judgment as to whether or not a ship should be detained, the inspector must apply the prescribed criteria¹⁴; but a ship must be detained if it is not equipped with a functioning voyage data recorder system, when its use is compulsory¹⁵.

In exceptional circumstances, where the overall condition of a ship is obviously sub-standard, the inspector may, in addition to detaining the ship, suspend the inspection of that ship until the responsible parties have taken the steps necessary to ensure that it complies with the relevant requirements of the Conventions¹⁶.

Without prejudice to any other requirement in the Convention enactments, in the event that a ship is detained following any inspection¹⁷, the Maritime and Coastguard Agency must immediately inform, in writing, the ship's flag administration¹⁸ or the consul of the state of the flag administration (or, in his absence, the nearest diplomatic representative of the state of the flag administration)¹⁹ of all the circumstances relating to the Maritime and Coastguard Agency's decision to detain the ship and must include the report of inspection²⁰. In addition, nominated surveyors or recognised organisations responsible for the issue of class certificates²¹ or other ship's certificates issued on behalf of the state of a flag administration must also be notified by the Agency, where relevant²².

The provisions relating to port state control²³ are without prejudice to the additional requirements of the Conventions concerning notification and reporting procedures related to port state control²⁴.

When carrying out inspections²⁵, the inspector must make all possible efforts to avoid a ship being unduly detained or delayed²⁶.

- 1 As to the meaning of 'owner' see PARA 694 note 8.
- 2 As to the Maritime and Coastguard Agency see PARA 56.
- 3 Is an inspection referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(2) (see PARA 692), reg 6 (see PARA 693) or reg 7 (see PARA 694): see reg 9(1) (amended by SI 1998/1433; SI 2003/1636).
- 4 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(1) (as amended: see note 3). As to the meaning of 'Conventions' see PARA 690 note 17.
- 5 As to the meaning of 'inspector' see PARA 690 note 18.
- 6 As to the meaning of 'ship' see PARA 690 note 2. As to the ships to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18) applies generally see PARA 690.
- 7 For these purposes, 'stoppage of an operation' means a formal prohibition of a ship to continue an operation due to established deficiencies which, individually or together, would render the continued operation hazardous: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2).
- 8 As to the meaning of 'Convention enactments' see PARA 690 note 22.
- 9 Is under the Merchant Shipping Act 1995 s 262 (see PARA 51): see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(2)(a).
- 10 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(2)(a). As to related offences see PARA 1195.
- 11 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(2)(b)(i).
- 12 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(2)(b)(ii).
- 13 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(2)(c) (amended by SI 1998/1433).
- 14 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(3)(a) (reg 9(3) substituted by SI 2003/1636). The prescribed criteria are those set out in Merchant Shipping Notice 1775(M) Annex VI: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(3)(a) (as so substituted). For the purposes of reg 9(3), the procedures set out in reg 13 (follow-up to inspection and detention) (see PARA 701) apply: reg 9(3)(d) (as so substituted). As to the meaning of 'Merchant Shipping Notice' see PARA 690 note 17.
- 15 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(3)(b) (as substituted: see note 14). The text refers to a functioning voyage data recorder system whose use is compulsory in accordance with Merchant Shipping Notice 1775(M) Annex XIII: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(3)(b) (as so substituted). If the deficiency mentioned in reg 9(3)(b) cannot readily be rectified in the port of detention, the Maritime and Coastguard Agency may either allow the ship to proceed to the nearest appropriate port where it is capable of being rectified (and must be so rectified), or require that the deficiency be rectified within a maximum period of 30 days: reg 9(3)(c) (as so substituted). A failure to comply with reg 9(3)(c) is an offence: see PARA 1195. See note 14.
- 16 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(4).
- 17 Is an inspection referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 5(2) (see PARA 692), reg 6 (see PARA 693) or reg 7 (see PARA 694): see reg 9(5)(a) (reg 9(5) substituted by SI 2003/1636).
- 18 For these purposes, 'flag administration', in relation to a ship, means the administration of the state whose flag the ship is entitled to fly: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2).
- 19 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(5)(a) (as substituted: see note 17).
- 20 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(5)(b) (as substituted: see note 17). As to the report that must be provided to the master on completion of any inspection see PARA 697.

21 For these purposes, 'class certificate' means a certificate from the classification society which has the ship in class showing that the ship conforms to the class standards stipulated by that society: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2) (definition added by SI 2003/1636).

22 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(5)(c) (as substituted: see note 17).

23 Ie the provisions of the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128: see reg 9(6).

24 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(6).

25 Ie under the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128: see reg 9(7).

26 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(7).

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699. Rectification and detention where inspection reveals absence of ISM certificates.

Where an inspection under the port state control provisions¹ reveals that a copy of the document of compliance or the safety management certificate required by the International Management Code for the Safe Operation of Ships and for Pollution Prevention ('ISM Code') are not on board a vessel to which the ISM Code is applicable² at the date of inspection, the inspector³ must detain the ship⁴.

Notwithstanding the absence of this documentation:

- 863 (1) if the inspection reveals no other deficiencies warranting detention the Maritime and Coastguard Agency⁵ may lift the detention order for the purpose of avoiding port congestion and whenever such a decision is taken, the Agency must immediately alert the competent authorities of the member states⁶; and
- 864 (2) where deficiencies hazardous to safety, health or the environment are found⁷ and cannot be rectified in the port of detention, the provisions governing the follow-up to inspection and detention⁸ apply⁹.

A ship which proceeds to sea from any port in any member state following release in order to avoid port congestion must not enter any port in the United Kingdom¹⁰ until the owner¹¹ has provided evidence to the satisfaction of the competent authority of the member state where the ship was detained that the ship fully complies with the requirements of the ISM Code¹². However, notwithstanding this prohibition¹³, access to a specific port in the United Kingdom may be permitted by the Secretary of State¹⁴ in the event of force majeure or overriding safety considerations, or to reduce or minimize the risk of pollution or to have deficiencies rectified, provided adequate measures to the satisfaction of the Maritime and Coastguard Agency have been implemented by the owner or the master of the ship to ensure safe entry¹⁵.

1 Ie an inspection under the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128: see PARAS 692 -694.

2 As to compliance with the ISM Code for large vessels see PARA 632.

3 As to the meaning of 'inspector' see PARA 690 note 18.

4 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9A(1) (reg 9A added by SI 1998/1433). As to the meaning of 'ship' see PARA 690 note 2. As to the ships to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18) applies generally see PARA 690.

5 As to the Maritime and Coastguard Agency see PARA 56.

6 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9A(2)(i) (as added: see note 4). As to the meaning of 'member state' see PARA 691 note 4. As to the meaning of 'competent authority' see PARA 691.

7 Ie as referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(2) (see PARA 698): see reg 9A(2)(ii) (as added: see note 4).

8 Ie the provisions set out in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13 (see PARA 701): see reg 9A(2)(ii) (as added: see note 4).

- 9 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9A(2)(ii) (as added: see note 4).
- 10 As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 11 As to the meaning of 'owner' see PARA 694 note 8.
- 12 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9A(3) (as added: see note 4). A failure to comply with reg 9A(3) is an offence: see PARA 1195.
- 13 In notwithstanding the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9A(3) (see the text and notes 10-12): see reg 9A(4) (as added: see note 4).
- 14 Is permitted in situations referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(8) (see PARA 701): see reg 9A(4) (as added: see note 4). As to the Secretary of State see PARA 38.
- 15 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9A(4) (as added: see note 4), reg 13(8) (amended by SI 1998/1433).

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700. Right of appeal; compensation.

Provisions allowing for the right of appeal and compensation¹ apply in relation to the exercise of the power of detention or refusal of access² in any Convention enactment³ which is contained in a statutory instrument⁴.

Any question as to whether any of the matters specified in relation to a ship⁵ in a detention notice or access refusal notice in pursuance of such a power of detention or refusal of access in connection with any opinion formed by the inspector⁶ constituted a valid basis for that opinion must, if the master or owner⁷ of the ship so requires by a notice given to the inspector within 21 days from the service of the detention notice or access refusal notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by him⁸. Where a notice is so given by the master or owner of the ship, the giving of the notice does not suspend the operation of the detention notice or access refusal notice⁹.

The arbitrator must have regard, in coming to his decision, to any other matters not specified in the detention notice or access refusal notice which appear to him to be relevant as to whether the ship was or was not liable to be detained or served with an access refusal notice¹⁰.

Where, on such a reference, the arbitrator decides as respects any matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the inspector's opinion, he must either cancel the detention notice or access refusal notice, as the case may be, or affirm it with such modifications as he may in the circumstances think fit¹¹; and in any other case the arbitrator must affirm such notice in its original form¹².

The arbitrator must include in his decision a finding whether there was or was not a valid basis for the detention of the ship or for the service of an access refusal notice¹³.

If, on such a reference relating to a detention notice or access refusal notice¹⁴:

- 865 (1) the arbitrator decides that the owner has proved that any matter did not constitute a valid basis for the inspector's opinion¹⁵; and
- 866 (2) it appears to him that the owner has proved that there were no reasonable grounds for the inspector to form that opinion¹⁶,

the arbitrator must award the owner of the ship such compensation in respect of any loss suffered in consequence of, as the case may be, the detention of the ship or the service of an access refusal notice, as the arbitrator thinks fit¹⁷. Any compensation so awarded is payable by the Secretary of State¹⁸.

1 le the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, regs 11, 12 (see the text and notes 5-18): see reg 10(1) (amended by SI 2003/1636). In respect of a detention notice served on a government ship under the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, see reg 21 (cited in PARA 636); and in relation to a detention notice served on a government ship under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, see reg 24 (cited generally in PARA 638).

2 See PARAS 698, 699.

3 As to the meaning of 'Convention enactments' see PARA 690 note 22.

4 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 10(1) (amended: see note 1). For these purposes, the text refers to a statutory instrument other than the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210 (see PARA 600): see reg 10(1) (as so amended). In addition, the Merchant Shipping Act 1995 s 96 (see PARA 1205) (references of detention notices to arbitration) and s 97 (see PARA 1206) (compensation in relation to an invalid detention) apply in relation to an access refusal notice under the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18) as they apply in relation to a detention notice under the Merchant Shipping Act 1995 s 95(3) (power to detain dangerously unsafe ship) (see PARA 1204) but with modifications: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 10(2), (3) (reg 10(2) substituted, reg 10(3) amended, by SI 2003/1636). The Merchant Shipping Act 1995 s 264 (references of notices to arbitration) (see PARA 53) and s 265 (compensation in connection with invalid prohibition notices) (see PARA 54), as applied by the Merchant Shipping (Survey and Certification) Regulations 1995, SI 1995/1210, reg 25 (see PARA 600), and as those sections apply in relation to a detention notice or order served on the master of a ship which is not a British ship, also apply in relation to an access refusal notice under the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I, but with modifications: reg 10(4). As to the meaning of 'access refusal notice' see PARA 696 note 5.

5 As to the meaning of 'ship' see PARA 690 note 2. As to the ships to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I, applies generally see PARA 690.

6 As to the meaning of 'inspector' see PARA 690 note 18.

7 As to the meaning of 'owner' see PARA 694 note 8.

8 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 11(1) (amended by SI 2003/1636). In connection with his functions under the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 11, an arbitrator has the powers conferred on an inspector by the Merchant Shipping Act 1995 s 259 (see PARA 49): reg 11(8). However, a person is not as qualified for appointment as an arbitrator under reg 11, unless he is:

961 (1) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate (reg 11(6)(a));

962 (2) a naval architect (reg 11(6)(b));

963 (3) a person having a ten-year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (see **LEGAL PROFESSIONS**) (Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 11(6)(c), (7)(a)); or

964 (4) a person with special experience of shipping matters, of the fishing industry, or of activities carried on in ports (reg 11(6)(d)).

9 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 11(2) (amended by SI 2003/1636).

10 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 11(3) (amended by SI 2003/1636).

11 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 11(4) (amended by SI 2003/1636).

12 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 11(4) (as amended: see note 11).

13 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 11(5) (amended by SI 2003/1636).

14 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 12(1) (amended by SI 2003/1636).

15 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 12(1)(a).

16 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 12(1)(b).

17 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 12(1) (as amended: see note 14).

18 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 12(2). As to the Secretary of State see PARA 38.

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701. Follow-up to inspections and detention.

Where deficiencies hazardous to safety, health or the environment are confirmed or revealed by inspection¹ but cannot be rectified in the port of inspection, the Maritime and Coastguard Agency² may allow the ship³ to proceed to the nearest appropriate repair yard available, as chosen by the master and the responsible parties, provided that the conditions determined by the competent authority⁴ of the flag administration⁵, and agreed by the Maritime and Coastguard Agency, are complied with⁶. Such conditions must ensure that the ship can proceed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment⁷. In these circumstances, the Maritime and Coastguard Agency must notify the competent authority of the state where the repair yard is situated, the relevant parties⁸ and any other authority as appropriate of all the conditions for the voyage⁹. Where the Maritime and Coastguard Agency receives notification from the competent authority of another member state¹⁰ in respect of a ship which that authority (the 'notifying authority') has¹¹ allowed to proceed to a repair yard in the United Kingdom¹², the Maritime and Coastguard Agency must inform the notifying authority of the action it has taken¹³.

A ship, detained in a port in a member state after inspection has revealed deficiencies which are clearly hazardous to safety, health or the environment, which has been allowed by the competent authority to proceed to the nearest appropriate repair yard¹⁴, and which proceeds to sea from any port in any member state¹⁵:

- 867 (1) without complying with the conditions determined by the competent authority of the member state in the port of inspection¹⁶; or
- 868 (2) which fails to comply with the applicable requirements of the Conventions¹⁷ by not calling into the indicated repair yard¹⁸,

must not enter any port within the United Kingdom, until the owner¹⁹ has provided evidence to the satisfaction of the competent authority of the member state where the ship was found defective that the ship fully complies with all applicable requirements of the Conventions²⁰.

If a ship proceeds to sea from a port in the United Kingdom without complying with the conditions determined by the Maritime and Coastguard Agency²¹, the Maritime and Coastguard Agency must immediately alert the competent authorities of all the other member states²².

If a ship, detained in a port in a member state after inspection which has revealed deficiencies which are clearly hazardous to safety, health or the environment, which has been allowed by the competent authority to proceed to the nearest appropriate repair yard²³, is so to proceed to a repair yard in the United Kingdom, but fails to call into the indicated repair yard, the Maritime and Coastguard Agency must immediately alert the competent authorities of all the other member states²⁴.

Access to a specific port may be permitted²⁵ by the Secretary of State²⁶ in the event of force majeure or overriding safety considerations, or to reduce or minimise the risk of pollution or to have deficiencies rectified, provided that adequate measures to the satisfaction of the Maritime and Coastguard Agency have been implemented by the owner or the master of the ship to ensure safe entry²⁷.

1 le deficiencies referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(2) (see PARA 698): see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(1) (amended by virtue of SI 1998/1433).

2 As to the Maritime and Coastguard Agency see PARA 56.

3 As to the meaning of 'ship' see PARA 690 note 2. As to the ships to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18), applies generally see PARA 690.

4 As to the meaning of 'competent authority' see PARA 691.

5 As to the meaning of 'flag administration' see PARA 698 note 18.

6 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(1) (as amended: see note 1). A failure to comply with reg 13(1) is an offence: see PARA 1195.

7 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(1) (as amended: see note 1).

8 le the parties referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(5) (see PARA 698): see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(2) (amended by virtue of SI 1998/1433). The notification of the parties referred to in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(2) must be in accordance with the MOU Annex 2 (see PARA 689): Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(3). As to the meaning of 'MOU' see PARA 690 note 19.

9 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(2) (as amended: see note 8).

10 As to the meaning of 'member state' see PARA 691 note 4.

11 le pursuant to EC Council Directive 95/21 (OJ L157, 7.7.95, p 1) art 11(1) (as to which see PARA 689): see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(4) (amended by virtue of SI 1998/1433).

12 As to the meaning of 'United Kingdom' see PARA 17 note 3.

13 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(4) (as amended: see note 11).

14 See the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(5)(b).

15 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(5)(a).

16 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(5)(a)(i).

17 As to the meaning of 'Conventions' see PARA 690 note 17.

18 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(5)(a)(ii).

19 As to the meaning of 'owner' see PARA 694 note 8.

20 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(5)(a). A failure to comply with reg 13(5) is an offence: see PARA 1195.

21 le in accordance with the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(1) (see the text and notes 1-7): see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(6) (amended by virtue of SI 1998/1433).

22 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(6) (as amended: see note 21).

23 le a ship to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(5) (see the text and notes 14-20) applies: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(7) (amended by virtue of SI 1998/1433).

24 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(7) (as amended: see note 23).

25 In notwithstanding the provisions of the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(5) (see the text and notes 14-20): see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(8) (amended by virtue of SI 1998/1433).

26 As to the Secretary of State see PARA 38.

27 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(8) (as amended: see note 25).

UPDATE

701 Follow-up to inspections and detention

NOTE 11--From 1 January 2011, Directive 95/21 replaced: European Parliament and EC Council Directive 2009/16 on port state control (OJ L131, 28.5.2009, p 57); references to the repealed directive should be construed as references to Directive 2009/16 and read in accordance with the correlation table in Annex XVI: art 37.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/7. SAFETY AND SECURITY AT SEA/(5) PORT STATE CONTROL/(ii) Shipping using EC Ports etc/702. Professional profile of inspectors.

702. Professional profile of inspectors.

Inspections¹ must be carried out only by inspectors² who fulfil specified criteria³.

When the required professional expertise cannot be provided by the Maritime and Coastguard Agency⁴, the inspector of the Maritime and Coastguard Agency may be assisted by any person with the required professional expertise⁵.

An inspector and any person assisting him must have no commercial interest either in the port of inspection or in the ships⁶ inspected, nor may an inspector be employed by or undertake work on behalf of non-governmental organisations which issue statutory and classification certificates or which carry out the surveys necessary for the issue of those certificates to ships⁷.

An inspector must carry a personal document in the form of an identity card issued by the Maritime and Coastguard Agency, which must include specified information⁸.

1 le under the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128 (see PARA 690 et seq): see reg 14(1) (amended by SI 2003/1636).

2 As to the meaning of 'inspector' see PARA 690 note 18.

3 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 14(1) (as amended: see note 1). The specified criteria are those set out in Merchant Shipping Notice 1775(M) Annex VII: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/31285, reg 14(1) (as so amended). As to the meaning of 'Merchant Shipping Notice' see PARA 690 note 17.

4 As to the Maritime and Coastguard Agency see PARA 56.

5 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 14(2) (amended by SI 1998/1433).

6 As to the meaning of 'ship' see PARA 690 note 2. As to the ships to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18), applies generally see PARA 690.

7 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 14(3).

8 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 14(4) (substituted by SI 1998/1433; amended by SI 2003/1636). The text refers to the information specified in Merchant Shipping Notice 1775(M) Annex VIII: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/31285, reg 14(4) (as so substituted and amended).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/7. SAFETY AND SECURITY AT SEA/(5) PORT STATE CONTROL/(ii) Shipping using EC Ports etc/703. Reports from pilots and port authorities of deficiencies in a ship.

703. Reports from pilots and port authorities of deficiencies in a ship.

A United Kingdom pilot¹, engaged in the berthing or unberthing of a ship² in the United Kingdom, or engaged on such a ship bound for a port within a member state³, must immediately inform⁴:

- 869 (1) in the case of an authorised pilot, the port authority⁵ authorising the pilot, who must immediately inform the Maritime and Coastguard Agency⁶; or
- 870 (2) in the case of other pilots, the Maritime and Coastguard Agency or the competent authority⁷ of another member state⁸,

as appropriate, whenever they learn in the course of their normal duties that there are deficiencies which may prejudice the safe navigation of the ship, or which may pose a threat of harm to the marine environment⁹.

If a port authority, when exercising its normal duties, learns that such a ship within its port has deficiencies which may prejudice the safety of the ship or pose an unreasonable threat of harm to the marine environment, that authority must immediately inform the Maritime and Coastguard Agency¹⁰.

1 For these purposes, 'United Kingdom pilot' means a pilot authorised pursuant to the Pilotage Act 1987 (see PARA 563) and any pilot boarding a ship in United Kingdom waters (as defined in the Merchant Shipping Act 1995 s 313(2)(a): see PARA 48 note 10): Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 15(2). As to the meaning of 'ship' see PARA 690 note 2. As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 I.e a ship to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18), applies (see PARA 690): see reg 15(1).

3 As to the meaning of 'member state' see PARA 691 note 4.

4 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 15(1).

5 For these purposes, 'port authority' means a harbour authority within the meaning of the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 619) or, if there is no such authority, the person having control of the operation of the port: Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 2(2).

6 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 15(1)(a) (reg 15(1)(a), (b) substituted by SI 1998/2198). As to the Maritime and Coastguard Agency see PARA 56.

7 As to the meaning of 'competent authority' see PARA 691.

8 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 15(1)(b) (as substituted: see note 6).

9 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 15(1). A failure to comply with reg 15(1) is an offence: see PARA 1195.

10 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 15(3) (amended by virtue of SI 1998/1433). A failure to comply with the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 15(3) is an offence: see PARA 1195.

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704. Publication of detentions and refusals of access.

The Maritime and Coastguard Agency¹ must ensure the publication, at least every month, of specified information² concerning ships³ which during the previous month⁴ either have been detained in a port in the United Kingdom⁵ or have been subject to a refusal of access to a port in the United Kingdom⁶.

1 As to the Maritime and Coastguard Agency see PARA 56.

2 Ie the information specified in Merchant Shipping Notice 1775(M) Annex IX Pt I: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/31285, reg 16 (substituted by SI 2001/2349; amended by SI 2003/1636). As to the meaning of 'Merchant Shipping Notice' see PARA 690 note 17.

3 Ie ships to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18), applies (see PARA 690): see reg 16 (as substituted and amended: see note 2). As to the meaning of 'ship' see PARA 690 note 2.

4 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 16 (as substituted and amended: see note 2).

5 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 16(a) (as substituted and amended: see note 2). As to the meaning of 'United Kingdom' see PARA 17 note 3. As to detentions see PARAS 698-699.

6 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 16(b) (as substituted and amended: see note 2). As to refusals of access see PARAS 698, 699.

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705. Reimbursement of costs.

All costs relating to any inspection carried out by the Maritime and Coastguard Agency¹ in relation to a ship², detained after inspection has revealed deficiencies which are clearly hazardous to safety, health or the environment³, must be charged to the owner⁴ or his representative in the United Kingdom⁵.

Any detention made pursuant to the port state control provisions⁶ must not be lifted until any fees payable⁷ in respect of any inspection leading to it or arising from it have been paid, or the Secretary of State⁸ has been provided with sufficient security for the fees⁹.

1 As to the Maritime and Coastguard Agency see PARA 56.

2 As to the meaning of 'ship' see PARA 690 note 2. As to the ships to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18), applies generally see PARA 690.

3 Ie any inspection carried out for the purpose of, or in connection with, the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(5) (see PARA 701): see reg 17(2) (amended by virtue of SI 1998/1433).

4 As to the meaning of 'owner' see PARA 694 note 8.

5 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 17(2) (as amended: see note 3). As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 Ie made pursuant to the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128 (see PARA 690 et seq): see reg 17(3).

7 Ie under the Merchant Shipping (Fees) Regulations 2006, SI 2006/2055 (as to which see PARA 62): see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 17(3); Interpretation Act 1978 s 17(2)(b).

8 As to the Secretary of State see PARA 38.

9 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 17(3); Interpretation Act 1978 s 17(2)(b).

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(iii) Right of Appeal and Compensation in respect of Detained Ships

706. In general.

The provisions relating to rights of appeal and compensation¹ apply in relation to the exercise of the power of detention contained in any regulations made under the Merchant Shipping (Prevention of Oil Pollution) Order 1983² or the Merchant Shipping (Prevention and Control of Pollution) Order 1987³ or in safety regulations⁴, as they apply in relation to the exercise of a power of detention in accordance with the port state control provisions⁵.

¹ I.e. the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, regs 11, 12 (see PARA 700): see reg 19(1).

² I.e. the Merchant Shipping (Prevention of Oil Pollution) Order 1983, SI 1983/1106 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 360): see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 19(1).

³ I.e. the Merchant Shipping (Prevention and Control of Pollution) Order 1987, SI 1987/470 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 360): see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 19(1).

⁴ I.e. safety regulations made or treated as made under the Merchant Shipping Act 1995 s 85 (see PARA 591): see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 19(1).

⁵ Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 19(1). The text refers to the port state control provisions contained in Pt I (regs 1-18) (see PARA 690 et seq): see reg 19(1). However, reg 19(1) does not apply to a ship which is not a United Kingdom ship in relation to regulations, a draft of which would be required by the Merchant Shipping Act 1995 s 85(6) (see PARA 591) to be approved by resolution of each House of Parliament: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 19(2). As to the meaning of 'ship' see PARA 690 note 2.

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(iv) Inspection of Crew's Familiarity with Operational Procedures

707. In general.

Ships¹, when in ports in the United Kingdom² (and also in the case of United Kingdom ships, when elsewhere), are subject to inspection for the purpose of checking that the master and crew are familiar with essential procedures and operations relating to the safety of the ship³.

1 As to the meaning of 'ship' see PARA 690 note 2. As to the ships to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18), applies generally see PARA 690.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 20(1). The Merchant Shipping Act 1995 s 258 (powers to inspect ships and their equipment etc) (see PARA 48) applies in relation to a ship in a port in the United Kingdom, but with modifications: see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 20(2).

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(6) SHIP AND PORT FACILITY SECURITY

(i) EC Regulation on Enhancing Ship and Port Facility Security

708. In general.

A European Parliament and EC Council Regulation¹ has been made to introduce and implement Community measures aimed at enhancing the security of ships used in international trade and domestic shipping² and associated port facilities in the face of threats of intentional unlawful acts³; and regulations⁴ have been made whose purpose is to provide for its implementation⁵.

1 The Regulation 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJ L129, 29.04.2004, p 6).

2 For these purposes, 'domestic shipping' means any transport service by ship in sea areas from a port facility of a member state to the same port facility or another port facility within that member state: see European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6) art 2(9). 'Port facility' means a location where the ship/port interface takes place; this includes areas such as anchorages, waiting berths and approaches from seaward, as appropriate: see art 2(11). 'Ship/port interface' means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons or goods or the provision of port services to or from the ship: see art 2(12).

3 See European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6) art 1(1). For these purposes, 'intentional unlawful act' means a deliberate act, which, by its nature or context, could harm the vessels used for international or national maritime traffic, their passengers or their cargoes, or the port facilities connected therewith: see art 2(13).

European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6) is also intended to provide a basis for the harmonised interpretation and implementation and Community monitoring of the special measures to enhance maritime security as provided for in the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874) ('SOLAS Convention'), with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277) (as to which see PARA 8) and the International Ship and Port Facility Security Code ('ISPS Code') adopted by the International Maritime Organisation (the 'IMO'): see European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6) art 1(2). See also note 5. For these purposes, 'maritime security' means the combination of preventive measures intended to protect shipping and port facilities against threats of intentional unlawful acts: see art 2(5). As to the International Maritime Organisation see PARA 13.

4 The Ship and Port Facility (Security) Regulations 2004, SI 2004/1495: see PARA 709 et seq.

5 See the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 3. The Secretary of State for Transport is designated as:

965 (1) the 'focal point for maritime security' for the purposes of European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6) (Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 5(a));

966 (2) the 'competent authority for maritime security' for the purposes of European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6) (Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 5(b)); and

967 (3) the 'designated authority' for the purposes of the SOLAS Convention Ch XI-2 and the ISPS Code (Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 5(c)).

For these purposes, 'SOLAS Convention' means the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874) (see note 3) as amended from time to time, in so far as those amendments are integrated in Community maritime legislation in accordance with European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6) art 10 (integration of amendments to international instruments), and 'ISPS Code' means the International Ship and Port Facility Security Code (see note 3) as amended from time to time, in so far as those amendments are integrated in Community maritime legislation in accordance with European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6) art 10: Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(1). The expressions used in the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, which are given a meaning in the SOLAS Convention or the ISPS Code have the same meaning they bear in those instruments (see the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(2), Schedule); and other expressions used in the Regulations which are also used in European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6), have the same meaning they bear in that Regulation (see the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(3)). As to the Department of Transport see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 509-511.

For the purposes of European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6), 'competent authority for maritime security' means an authority designated by a member state to coordinate, implement and monitor the application of the security measures laid down in European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6) in respect of ships and/or one or more port facilities (the competences of this authority may differ depending on the tasks assigned to it) (art 2(7)); 'focal point for maritime security' means the body designated by each member state to serve as a contact point for the EC Commission and other member states and to facilitate, follow up and inform on the application of the maritime security measures laid down in European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6) (art 2(6)).

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(ii) Implementation of EC Regulation on Enhancing Ship and Port Facility Security

A. SHIPS AND PORT FACILITIES TO WHICH THE PROVISIONS APPLY

709. Application of the ship and port facility security regulations.

The ship and port facility security regulations¹ apply to:

- 871 (1) the following types of United Kingdom ships² and non-United Kingdom ships³ in United Kingdom waters⁴ when engaged on international voyages⁵, and their companies⁶: (a) passenger ships including high speed craft which carry more than 12 passengers⁷; (b) cargo ships, including high speed craft, of 500 gross tonnage and upwards⁸; (c) mobile offshore drilling units⁹;
- 872 (2) Class A passenger ships¹⁰ operating domestic services within United Kingdom waters and their companies¹¹;
- 873 (3) port facilities serving the ships specified in heads (1) and (2) above¹².

The ship and port facility security regulations¹³ do not apply to:

- 874 (i) ships of war and troop ships¹⁴;
- 875 (ii) cargo ships of less than 500 gross tonnage¹⁵;
- 876 (iii) ships not propelled by mechanical means¹⁶;
- 877 (iv) wooden ships of primitive build¹⁷;
- 878 (v) pleasure yachts not engaged in trade¹⁸;
- 879 (vi) fishing vessels¹⁹; and
- 880 (vii) vessels not engaged in commercial activities²⁰.

1 Ie the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495: see reg 4(1). As to the purpose of these regulations see PARA 708.

2 For these purposes, 'United Kingdom ship' has the same meaning as in the Merchant Shipping Act 1995 s 85(2) (see PARA 591 note 4): Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(1).

3 For these purposes, 'Non-United Kingdom ship' means a ship other than a United Kingdom ship: Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(1).

4 For these purposes, 'United Kingdom waters' means the sea or other waters within the seaward limits of the territorial sea of the United Kingdom: Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(1). As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the territorial sea generally see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 123.

5 For these purposes, 'international voyage' means a voyage from a country to which the SOLAS Convention applies to a port outside such country, or conversely: Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(1). As to the meaning of 'SOLAS Convention' see PARA 708 note 5.

6 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 4(1)(a).

7 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 4(1)(a)(i). For these purposes, 'passenger ship' means a ship which carries more than 12 passengers: see the SOLAS Convention reg I/2(f); definition applied by virtue of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(2), Schedule. 'High speed craft' means a craft capable of a maximum speed in metres per second (m/s) equal to or exceeding $3.7\sqrt{0.1667V}$, where V equals the volume of displacement corresponding to the design waterline (m^3), excluding craft the hull of which is supported clear above the water surface in non displacement mode by aerodynamic forces generated by ground effect: see the SOLAS Convention reg X/1.2; definition applied by virtue of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(2), Schedule.

8 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 4(1)(a)(ii). For these purposes, 'cargo ship' means any ship which is not a passenger ship: see the SOLAS Convention reg I-2(g); definition applied by virtue of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(2), Schedule.

9 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 4(1)(a)(iii). For these purposes, 'mobile offshore drilling units' means a mechanically propelled mobile offshore drilling unit not on location: see the SOLAS Convention reg IX/1; definition applied by virtue of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(2), Schedule.

10 For these purposes, 'Class A passenger ships' are passenger ships within the meaning of EC Council Directive 98/18 of 17 March 1998 (OJ L144, 15.05.1998, p 1) on Safety Rules and Standards for Passenger Ships art 4 (see PARA 602), in which 'Class A' means a passenger ship engaged on domestic voyages other than voyages covered by Classes B, C and D in art 4: Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(1).

11 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 4(1)(b). 'Domestic shipping' means any transport service by ship in sea areas from a port facility of the United Kingdom to the same port facility or another port facility within the United Kingdom: reg 2(1). For these purposes, 'company' means the owner of the ship or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code ('ISM Code') (as to which see PARA 632): see the SOLAS Convention reg IX-1; definition applied by virtue of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(2), Schedule.

12 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 4(1)(c). For these purposes, 'port facility' means a location determined as such by the designated authority, where the ship/port interface takes place and includes areas such as anchorages, waiting berths and approaches from seaward as appropriate: see the SOLAS Convention reg XI-2/1.9; definition applied by virtue of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(2), Schedule. 'Ship/port interface' means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons, goods or the provision of port services to or from the ship: see the SOLAS Convention reg XI-2/1.8; definition applied by virtue of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(2), Schedule.

13 In the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495: see reg 4(2).

14 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 4(2)(a).

15 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 4(2)(b).

16 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 4(2)(c).

17 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 4(2)(d).

18 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 4(2)(e).

19 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 4(2)(f).

20 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 4(2)(g).

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B. INSPECTIONS

710. Powers of inspection exercisable in relation to ships and port facilities.

A duly authorised officer¹ has the power², on production, if required, of his credentials, to inspect³:

- 881 (1) any United Kingdom ship⁴;
- 882 (2) any non-United Kingdom ship⁵ while in a port facility⁶;
- 883 (3) any non-United Kingdom ship in United Kingdom waters⁷ which has communicated its intention to enter a port in the United Kingdom⁸;
- 884 (4) any United Kingdom port facility⁹.

A duly authorised officer inspecting a ship or a port facility has the following powers¹⁰:

- 885 (a) to subject any property found by him on the ship, or any apparatus or equipment installed on the ship which is required by or approved in the relevant ship security plan to such tests¹¹;
- 886 (b) to subject any part of the port facility or any property found by him in the port facility, or any apparatus or equipment installed in the port facility which is required by or approved in the relevant port facility security plan to such tests¹²;
- 887 (c) to take such steps to ascertain what practices or procedures are being followed in relation to security, or to test the effectiveness of any practice or procedure relating to security¹³; or
- 888 (d) to require the company, or the company security officer, or the ship security officer, or the master of the ship, or the port facility security officer, or the owner of the port facility security plan, or person acting on behalf of any of those persons to furnish to him such information¹⁴,

to be exercised as the duly authorised officer may consider necessary for the purpose for which the inspection is carried out¹⁵.

A duly authorised officer, for the purpose of exercising any power so conferred on him¹⁶ in relation to a ship or in relation to a port facility, may¹⁷:

- 889 (i) for the purpose of inspecting a ship, go on board and take all such steps as are necessary to ensure that it is not moved¹⁸; or
- 890 (ii) for the purpose of inspecting a port facility, enter any building or works in the port facility or enter any land in the port facility¹⁹.

However, the powers conferred under heads (i) and (ii) above do not include power for a duly authorised officer to use force for the purpose of going on board any ship, entering any building or works or entering any land²⁰.

Any person who, without reasonable excuse, fails to comply with a requirement imposed on him under head (d) above, or who, in furnishing any information so required makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, commits an offence²¹.

1 For these purposes, 'duly authorised officer' means either an inspector or a surveyor appointed under the Merchant Shipping Act 1995 s 256 (as to which see PARA 46), or an 'authorised person' within the meaning of the Aviation and Maritime Security Act 1990 s 46(1) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 725): Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(1). A person who intentionally obstructs a duly authorised officer acting in the exercise of a power duly conferred upon him (as to which see the text and notes 2-15), or who falsely pretends to be a duly authorised officer, commits an offence: see reg 12; and PARA 1193.

2 le for the purpose of enabling a duly authorised officer to verify that ships and port facilities are in compliance with the requirements of Regulation 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJ L129, 29.04.2004, p 6) (as to which see PARA 708) or of ascertaining whether any enforcement notice is being or has been complied with: see the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(1). As to the meaning of 'port facility' see PARA 709 note 12. As to enforcement notices see PARA 714.

The following persons are required to submit to such inspections of ships and port facilities that are conducted by the EC Commission pursuant to European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6) art 9 (implementation and conformity checking):

- 968 (1) the company (Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 7(1)(a));
- 969 (2) the company security officer (reg 7(1)(b));
- 970 (3) the ship security officer (reg 7(1)(c));
- 971 (4) the master of a ship (reg 7(1)(d));
- 972 (5) the port facility security officer (reg 7(1)(e)); and
- 973 (6) the owner of the port facility security plan (reg 7(1)(f)).

For these purposes, 'master' includes every person, except a pilot, having command or charge of a ship, and 'owner of the port facility security plan' means the person who submits the port facility security plan or the person on whose behalf that plan is submitted to the Secretary of State for approval under the ISPS Code Pt A section 16.2: Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(1). As to the meaning of 'ISPS Code' see PARA 708 note 5. 'Part A of the ISPS Code' means the Preamble and the mandatory requirements forming Part A of the ISPS Code, as reproduced in the European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6) Annex II, concerning the provisions of the SOLAS Convention Annex Ch XI-2, in its up-to-date version: see European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6) art 2(3); definition applied by virtue of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(3) (see PARA 708 note 5). As to the meaning of 'SOLAS Convention' see PARA 708 note 5. For these purposes, 'company security officer' means the person designated by the company for ensuring that a ship security assessment is carried out; that a ship security plan is developed, submitted for approval, and thereafter implemented and maintained; and for liaison with port facility security officers and the ship security officer: see the ISPS Code Part A section 2.1.7; definition applied by virtue of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(2), Schedule. 'Port facility security officer' means the person designated as responsible for the development, implementation, revision and maintenance of the port facility security plan and for liaison with the ship security officers and company security officers: see the ISPS Code Part A section 2.1.8; definition applied by virtue of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(2), Schedule. 'Ship security officer' means the person on board the ship, accountable to the master, designated by the company as responsible for the security of the ship, including implementation and maintenance of the ship security plan and for liaison with the company security officer and port facility security officers: see the ISPS Code Part A section 2.1.6; definition applied by virtue of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(2), Schedule. As to the meaning of 'company' for these purposes see PARA 709 note 11.

The persons referred to in heads (1) to (6) above must take all necessary steps to remedy any shortcomings identified by the EC Commission following such an inspection as are notified to them in writing by the Secretary of State, and must do so within such period as may be required in the notification: Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 7(2). As to the Secretary of State see PARA 38.

- 3 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(1).
- 4 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(1)(a). As to the meaning of 'United Kingdom ship' see PARA 709 note 2.
- 5 As to the meaning of 'non-United Kingdom ship' see PARA 709 note 3.
- 6 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(1)(b).
- 7 As to the meaning of 'United Kingdom waters' see PARA 709 note 4.
- 8 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(1)(c).
- 9 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(1)(d).
- 10 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(2).
- 11 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(2)(a).
- 12 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(2)(b).
- 13 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(2)(c).
- 14 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(2)(d).
- 15 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(2).
- 16 le by the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(1), (2) (see the text and notes 1-15): see reg 6(3).
- 17 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(3).
- 18 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(3)(a).
- 19 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(3)(b).
- 20 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(4).
- 21 See the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(5); and PARA 1193.

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C. REQUIREMENTS RELATED TO DOCUMENTS

711. Retention of records related to ship and port facility security.

The master¹ is responsible for ensuring that records of activities, as specified in Part A of the ISPS Code², and which are addressed in the ship security plan, are kept on board the ship for a period of at least three years from the date of the activity taking place³.

Any declaration of security⁴ which is completed in respect of a ship or port facility must be retained for a period of at least three years after it was last used⁵: (1) in respect of ships, on board the ship by the master⁶; and (2) in respect of port facilities, by the port facility security officer⁷.

1 As to the meaning of 'master' see PARA 710 note 2.

2 I.e. the activities specified in the ISPS Code Pt A section 10.1: see the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 17. As to the meaning of 'ISPS Code' see PARA 708 note 5; and as to the meaning of 'Part A of the ISPS Code' see PARA 710 note 2.

3 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 17.

4 For these purposes, 'declaration of security' means an agreement reached between a ship and either a port facility or another ship with which it interfaces specifying the security measures each will implement: see the SOLAS Convention reg XI-2/1.15; definition applied by virtue of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(2), Schedule. As to the meaning of 'port facility' see PARA 709 note 12. As to the meaning of 'SOLAS Convention' see PARA 708 note 5.

5 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 18(1).

6 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 18(1)(a). In the case of ships, any completed declaration of security relating to one of its last ten calls at port facilities must be retained on board the ship by the master for as long as it relates to any of those last ten calls, even where the period over which those calls extend exceeds the minimum three-year period referred to in reg 18(1) (see the text and notes 4-5): reg 18(2).

7 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 18(1)(b). As to the meaning of 'port facility security officer' see PARA 710 note 2.

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712. Procedure for making amendments to security plans.

In accordance with the ISPS Code¹, the Secretary of State² must decide (and thereafter must notify companies³ and owners of port facility security plans⁴, in writing, of) the changes or amendments to the relevant approved ship security plan or port facility security plan that must first be submitted to him for approval before they are implemented in respect of those ships and port facilities⁵. Any changes or amendments notified in this way⁶ must not be implemented by the companies or owners of port facility security plans without first obtaining the approval of the Secretary of State⁷.

1 As to the meaning of 'ISPS Code' see PARA 708 note 5.

2 As to the Secretary of State see PARA 38.

3 As to the meaning of 'company' for these purposes see PARA 709 note 11.

4 As to the meaning of 'owner of the port facility security plan' see PARA 710 note 2. As to the meaning of 'port facility' see PARA 709 note 12.

5 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 19(1).

6 I.e. the changes or amendments referred to in the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 19(1) (see the text and notes 1-5): see reg 19(2).

7 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 19(2).

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D. DETENTION NOTICES

713. Detention notices; the procedure relating to objections.

Where a duly authorised officer¹ proposes to detain a ship pursuant to control and compliance measures², he must serve on the master³ of the ship a notice (a 'detention notice')⁴. A detention notice must specify the steps that the duly authorised officer requires to be taken in respect of the ship in order to secure its release from detention⁵, and must require the master to take steps to ensure that the ship does not proceed to sea while the detention notice is in force⁶.

The master of a ship in respect of which a detention notice is served may object to the notice in writing to the Secretary of State⁷. On receipt of an objection to a detention notice, the Secretary of State must:

- 891 (1) consider the objection⁸;
- 892 (2) allow the person making the objection and the duly authorised officer who gave the notice an opportunity to make written or oral representations to the Secretary of State or a person appointed by him⁹;
- 893 (3) confirm, modify or cancel the notice¹⁰; and
- 894 (4) give notice of his decision in writing to the person who made the objection and to the duly authorised officer who served the notice¹¹.

The Secretary of State must include in his decision a finding as to whether in relation to any of the matters specified in respect of a ship in a detention notice, there was or was not a valid basis for the detention of the ship¹². A detention notice in respect of a ship continues in force until a duly authorised officer cancels it by notice in writing¹³ or until the Secretary of State cancels it under head (3) above¹⁴. A person commits an offence if without reasonable excuse he fails to comply with a requirement of a detention notice¹⁵.

Where, having considered an objection in respect of a detention notice relating to a ship¹⁶, the Secretary of State finds that there was no valid basis for the detention, the owner of the ship is entitled, on application, to receive compensation for such loss or damage suffered by him which is directly attributable to the detention of the ship¹⁷. Such a claim for compensation must be made in writing to the Secretary of State within three months beginning with the date the Secretary of State serves notice of his decision under head (4) above¹⁸. Any person claiming compensation in this way¹⁹ must provide all such information and supplementary information in respect of the loss or damage incurred as the Secretary of State may at any time reasonably require and must verify the same in any such manner, including the production of original documents in his possession or control, as may be reasonably required²⁰.

1 As to the meaning of 'duly authorised officer' for these purposes see PARA 710 note 1.

2 I.e. pursuant to the control and compliance measures specified in the SOLAS Convention Ch XI-2 reg 9: see the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(1). As to the meaning of 'SOLAS Convention' see PARA 708 note 5.

3 As to the meaning of 'master' see PARA 710 note 2.

4 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(1). The detention notice must state that the duly authorised officer is detaining the ship because he has grounds for believing that:

974 (1) the ship is not in compliance with the SOLAS Convention Ch XI-2 (Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(1)(a));

975 (2) the ship is not in compliance with the ISPS Code Pt A (Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(1)(b)); or

976 (3) there has been a failure to make available for inspection a valid International Ship Security Certificate or a valid Interim International Ship Security Certificate issued under the ISPS Code Pt A (Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(1)(c)).

As to the meaning of 'ISPS Code' see PARA 708 note 5; and as to the meaning of 'Part A of the ISPS Code' see PARA 710 note 2. As to the service of notices (including by means of electronic communication) under the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, see reg 20 (amended by SI 2006/2190).

5 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(2).

6 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(3).

7 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(4). As to the Secretary of State see PARA 38.

8 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(5)(a).

9 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(5)(b).

10 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(5)(c).

11 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(5)(d).

12 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(6).

13 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(7)(a).

14 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(7)(b).

15 See the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(8); and PARA 1193.

16 Ie under the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8 (see the text and notes 1-15): see reg 9(1).

17 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 9(1). Any compensation granted under reg 9 is payable by the Secretary of State (reg 9(5)); and any disputed question as to the right to (or the amount of) any compensation payable under reg 9 must be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by him (reg 9(4)).

18 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 9(2).

19 Ie under the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 9: see reg 9(3).

20 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 9(3).

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E. ENFORCEMENT NOTICES

714. Enforcement notices; the procedure relating to objections.

Where it appears to a duly authorised officer¹ that any of the following persons², namely:

- 895 (1) the company³;
- 896 (2) the company security officer⁴;
- 897 (3) the ship security officer⁵;
- 898 (4) the master⁶ of a ship⁷;
- 899 (5) the port facility security officer⁸;
- 900 (6) the owner of the port facility security plan⁹; or
- 901 (7) any person who carries on port operations in a port facility¹⁰,

has failed to comply with the relevant specified requirements of the SOLAS Convention¹¹, the ISPS Code¹², or the ship and port facility security regulations¹³, that duly authorised officer may serve a notice (an 'enforcement notice') on that person¹⁴. An enforcement notice:

- 902 (a) must state the matters which appear to the duly authorised officer to constitute a failure to comply with the requirements duly specified in the SOLAS Convention, in the ISPS Code, or in the ship and port facility security regulations¹⁵;
- 903 (b) may be framed so as to afford the person on whom it is served a choice between different ways of complying with the requirements set out in the notice¹⁶;
- 904 (c) must specify the steps which the duly authorised officer requires to be taken (or the activity or the activities which the duly authorised officer requires to cease) in order to achieve compliance with the specified requirements mentioned in head (a) above¹⁷;
- 905 (d) must specify the date on which it is to take effect and takes effect on that date¹⁸; and
- 906 (e) must specify the period at the end of which any steps are required to have been taken (or any activities are required to have ceased) and may specify different periods for different steps or activities¹⁹.

Any person who without reasonable excuse fails to comply with an enforcement notice served on him is guilty of an offence²⁰.

A person on whom an enforcement notice is served may serve on the Secretary of State a notice in writing of his objection to the enforcement notice²¹. The grounds of objection to an enforcement notice are:

- 907 (i) that the steps required by the notice to be taken as mentioned in heads (a) to (e) above²² have been complied with²³;
- 908 (ii) that the matters stated in the enforcement notice in accordance with head (a) above do not constitute a failure to comply with the requirements mentioned there²⁴;

- 909 (iii) that any requirement of the notice is unnecessary for complying with the specified requirements²⁵ and should be dispensed with or, having regard to the terms of those requirements, is excessively onerous or inconvenient and should be modified in a manner specified in the notice of objection²⁶.

An objection to an enforcement notice must be served on the Secretary of State within seven days of the date on which the enforcement notice was served²⁷.

Where the person on whom an enforcement notice is served serves a notice objecting to the enforcement notice²⁸, the Secretary of State must consider the grounds of the objection and, if so required by the objector, must afford to him an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose²⁹. The Secretary of State must then serve on the objector a notice in writing either confirming the enforcement notice as originally served³⁰, or confirming it subject to one or more modifications specified in the notice³¹, or cancelling the enforcement notice³². An enforcement notice to which an objection has been made may not take effect until it has been so confirmed (with or without modification) by such a notice³³.

An enforcement notice served on any person may be revoked by a notice served on him by a duly authorised officer, and may be varied by a further enforcement notice served on him by a duly authorised officer³⁴.

1 As to the meaning of 'duly authorised officer' for these purposes see PARA 710 note 1.

2 See the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 13(1).

3 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 13(2)(a). As to the meaning of 'company' for these purposes see PARA 709 note 11.

4 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 13(2)(b). As to the meaning of 'company security officer' see PARA 710 note 2.

5 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 13(2)(c). As to the meaning of 'ship security officer' see PARA 710 note 2.

6 As to the meaning of 'master' see PARA 710 note 2.

7 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 13(2)(d).

8 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 13(2)(e). As to the meaning of 'port facility security officer' see PARA 710 note 2. As to the meaning of 'port facility' see PARA 709 note 12.

9 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 13(2)(f). As to the meaning of 'owner of the port facility security plan' see PARA 710 note 2.

10 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 13(2)(g).

11 I.e. the requirements of the SOLAS Convention Ch XI-2: see the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 13(1)(a). As to the meaning of 'SOLAS Convention' see PARA 708 note 5.

12 I.e. the requirements of the ISPS Code Pt A or of the ISPS Code Pt B para 1.12, 6.1, 8.3, 8.5, 8.7-8.10, 13.6, 13.7, 18.5 or 18.6: see the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 13(1)(b), (c). For these purposes, 'Part B of the ISPS Code' means the guidelines forming Part B of the ISPS Code, as reproduced in Regulation 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJ L129, 29.04.2004, p 6) Annex III, regarding the provisions of the SOLAS Convention Annex Ch XI-2 (see note 11) and of Part A of the ISPS Code, in its up-to-date version: see European Parliament and EC Council Regulation 725/2004 (OJ L129, 29.04.2004, p 6) art 2(4); definition applied by virtue of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(3) (see PARA 708 note 5). As to the meaning of 'ISPS Code' see PARA 708 note 5; and as to the meaning of 'Part A of the ISPS Code' see PARA 710 note 2.

13 le the requirement to submit to an inspection by the EC Commission, and to rectify any shortcomings identified following such an inspection in accordance with the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 7 (see PARA 710) (see reg 13(1)(d)); or the requirement to submit specified changes or amendments to a ship security plan or a port facility security plan to the Secretary of State for approval in accordance with reg 19 (see PARA 712) (reg 13(1)(e)). As to the Secretary of State see PARA 38.

14 See the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 13(1). As to the service of notices (including by means of electronic communication) under the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, see reg 20 (amended by SI 2006/2190).

15 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 14(1). Head (a) in the text refers to a failure to comply with the requirements specified in reg 13 (see the text and notes 1-14): see reg 14(1).

16 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 14(2). An enforcement notice requiring a person not to cause or permit anything to be done must be construed as requiring him to take all such steps as in any particular circumstances are practicable and necessary to prevent that thing from being done: reg 14(7).

17 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 14(3). Head (c) in the text refers to compliance with the requirements specified in reg 13 (see the text and notes 1-14): see reg 14(3).

18 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 14(4).

19 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 14(5). Where different periods apply to different steps or activities, references in the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased: reg 14(6).

20 See the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 15; and PARA 1193.

21 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 16(1).

22 le the steps required to be taken for the purposes of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 13 (see the text and notes 1-14): see reg 16(2)(a).

23 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 16(2)(a).

24 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 16(2)(b) (substituted by SI 2005/1434). The text refers to the requirements specified in the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 13 (see the text and notes 1-14): see reg 16(2)(b) (as so substituted).

25 le the requirements specified in the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 13 (see the text and notes 1-14): see reg 16(2)(c).

26 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 16(2)(c).

27 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 16(3). A person making an objection to an enforcement notice under reg 16 must submit to the Secretary of State (either when making the objection or within the seven days referred to in reg 16(3)) a statement in writing specifying the grounds on which he is objecting to the enforcement notice, and providing such further information as may be appropriate: reg 16(4).

28 le under the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 16(1) (see the text and note 21): see reg 16(5).

29 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 16(5).

30 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 16(5)(a).

31 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 16(5)(b).

32 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 16(5)(c).

33 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 16(6).

34 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 16(7).

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8. AVOIDANCE OF COLLISIONS

(1) INTRODUCTION

715. Meaning of 'collision'; power to make regulations.

Damage by collision is damage sustained by a ship as a result of another ship coming into contact with her¹.

Safety regulations² made by the Secretary of State³ may make provision with respect to (amongst other things) the steps to be taken to prevent any collision involving a ship and in consequence of any collision involving a ship⁴.

Before 1840, liability in collision cases was determined by applying rules of navigation which were a matter for the opinion of experts⁵. In 1840, however, the Trinity House Regulations⁶ were promulgated and were regarded by the Admiralty Court as of binding authority⁷. Since then, many sets of regulations of varying application have been made from time to time, by Order in Council and otherwise, for the purpose of preventing collision⁸. Those now in force are the International Regulations for Preventing Collisions at Sea 1972 ('COLREGS')⁹.

1 *Everard v Kendall* (1870) LR 5 CP 428; *The Normandy* [1904] P 187, 9 Asp MLC 568, DC; *The Upcerne* [1912] P 160, 12 Asp MLC 281. Damage done by a ship to a pier or other structure on land is not damage by collision for this purpose: cf *The Normandy*; *Gartland Steamship Co and Lablanc v R* [1960] 1 Lloyd's Rep 388 (Can SC). As to collisions with piers see PARA 794. As to the interpretation of a collision clause in a marine insurance policy see **INSURANCE** vol 25 (2003 Reissue) PARAS 345-347.

2 As to the meaning of 'safety regulations' see PARA 591.

3 As to the Secretary of State see PARA 38.

4 See the Merchant Shipping Act 1995 s 85(3)(k); and PARA 591. In exercise of the power so conferred, the Secretary of State has made the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75 (see PARA 716 et seq). See also the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874), with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277) (see PARA 8), especially Ch V, which is given effect by the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473 (as to which see PARA 641).

5 Cf *Jameson v Drinkald* (1826) 5 LJOSCP 30.

6 Ie the Trinity House Regulations 1840 (revoked). For a history of the collision regulations see Sturt's *The New Collision Regulations*.

7 *The Duke of Sussex* (1841) 1 Wm Rob 274; *The Gazelle* (1842) 1 Wm Rob 471.

8 It would seem that it is also the purpose of the Collision Regulations to minimise the results of collision: see *Stoomvaart Maatschappij Nederland v Peninsular and Oriental Steam Navigation Co* (1880) 5 App Cas 876 at 903, 904, HL, per Lord Watson.

9 Ie the International Regulations for Preventing Collisions at Sea (London, 20 October 1972; TS 77 (1977); Cmnd 6962) (as to which see PARA 8). Vessels to which the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, apply must comply with the provisions of the International Regulations for Preventing Collisions at Sea 1972 rr 1-36, Annexes I-III: see the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 4(1); and PARA 718. For the purposes of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, 'International Regulations' means the International Regulations for Preventing Collisions at Sea 1972 as

amended by Resolutions A464(XII), A626(15), A678(16) and A736(18) of the International Maritime Organization ('IMO'), and by any further Resolutions of the IMO which the Secretary of State notifies by Merchant Shipping Notice that he considers relevant from time to time: Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 1(3). 'Merchant Shipping Notice' means a Notice described as such and issued by the Maritime and Coastguard Agency: reg 1(3). As to the International Maritime Organisation see PARA 13; as to the Maritime and Coastguard Agency see PARA 56.

Accordingly, Merchant Shipping Notice 1781(M) sets out the International Regulations for Preventing Collisions at Sea 1972 as amended by Resolutions A464(XII), A626(15), A678(16), A736(18) and A.910(22) of the IMO, which came into force in this form internationally on 29 November 2003, and Merchant Shipping Notice 1781(M), and the rules referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see Merchant Shipping Notice 1781(M) Introduction paras 1-3. The application of the Rules contained in the International Regulations for Preventing Collisions at Sea 1972 is limited, through the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, to the vessels or ships as defined in the Merchant Shipping Act 1995; and application to craft falling outside of this definition is subject to a Maritime and Coastguard Agency opinion of what it considers to be good conduct and practice by the owners, operators and those in charge of such craft: see Merchant Shipping Notice 1781(M) Introduction para 4. As to the application of the International Regulations see PARA 720.

See also the International Convention on certain Rules concerning Civil Jurisdiction in matters of Collision 1952 (Brussels, 10 May 1952; Cmd 8954), to which the Administration of Justice Act 1956 (largely repealed) gave effect in English law (see now the Supreme Court Act 1981 Pt II (ss 15-52), especially s 22; and PARA 94).

UPDATE

715 Meaning of 'collision'; power to make regulations

NOTE 9--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/8. AVOIDANCE OF COLLISIONS/(1) INTRODUCTION/716. Application of the provisions relating to distress signals and prevention of collisions.

716. Application of the provisions relating to distress signals and prevention of collisions.

The provisions relating to distress signals and the prevention of collisions¹ apply to the following vessels²:

- 910 (1) United Kingdom ships³, wherever they may be, and other ships while within the United Kingdom⁴ or the territorial waters thereof⁵; and
- 911 (2) seaplanes registered in the United Kingdom and on the surface of water anywhere, and other seaplanes on the surface of water in the United Kingdom or the territorial waters thereof⁶.

1 The Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75 (see also PARA 717 et seq): see reg 2(1).

2 Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 2(1).

3 For these purposes, 'ships' includes hovercraft: Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 2(2).

4 As to the meaning of 'United Kingdom' see PARA 17 note 3.

5 Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 2(1) (a). As to the territorial sea generally see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 123.

6 Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 2(1) (b).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/8. AVOIDANCE OF COLLISIONS/(1) INTRODUCTION/717. Signals of distress.

717. Signals of distress.

The signals of distress which must be used by United Kingdom ships¹, wherever they may be, and other ships while within the United Kingdom or the territorial waters thereof², are those set out in Annex IV to the International Regulations for Preventing Collisions at Sea 1972³.

No signal of distress must be used by any vessel unless the master of the vessel so orders⁴; and the master must not order any signal of distress to be used by his vessel unless he is satisfied⁵:

- 912 (1) that his vessel is in serious and imminent danger, or that another ship or an aircraft or person is in serious and imminent danger and cannot send that signal⁶; and
- 913 (2) that the vessel in danger, whether his own vessel or another vessel, or the aircraft or person in danger, as the case may be, requires immediate assistance in addition to any assistance then available⁷.

The master of a vessel which has sent any signal of distress by means of radio or other means must cause that signal to be revoked by all appropriate means as soon as he is satisfied that the vessel or aircraft to which or the person to whom the signal relates is no longer in need of such assistance⁸.

1 As to the meaning of 'ships' see PARA 716 note 3.

2 The vessels to which the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 2(1)(a) applies (see PARA 716): see reg 3(1). As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the territorial sea generally see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 123.

3 Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 3(1). The text refers to the signals of distress set out in the International Regulations for Preventing Collisions at Sea (London, 20 October 1972; TS 77 (1977); Cmnd 6962) Annex IV (Distress Signals) (see PARA 755): see the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 3(1). As to the meaning of 'International Regulations' see PARA 715 note 9.

4 Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 3(2).

5 Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 3(3).

6 Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 3(3) (a).

7 Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 3(3) (b).

8 Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 3(4).

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718. Prevention of collision.

Vessels to which the provisions¹ relating to distress signals and the prevention of collisions apply² must comply with the relevant provisions of the International Regulations for Preventing Collisions at Sea 1972³.

¹ ie the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75 (see PARAS 716, 717, 719 et seq): see reg 4(1).

² As to the vessels to which the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, apply see PARA 716.

³ Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 4(1). The text refers to the provisions of the International Regulations for Preventing Collisions at Sea (London, 20 October 1972; TS 77 (1977); Cmnd 6962) rr 1-36, Annexes I-III (as to which see PARA 720 et seq): see the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 4(1). As to the meaning of 'International Regulations' see PARA 715 note 9.

Nothing in the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, is to be taken to require compliance by any vessel or class of vessels, which, by virtue of the International Regulations for Preventing Collisions at Sea 1972 r 38 (exemptions from the Collision Regulations in favour of any vessel or class of vessels, the keel of which was laid or which was at a corresponding stage of construction before the date of entry into force of the Regulations, provided that she complies with the requirements of the International Regulations for Preventing Collisions at Sea 1960 (revoked)), may be exempted from compliance therewith, with any of the provisions of the International Regulations for Preventing Collisions at Sea 1972 specified in r 38(a)-(h) inclusive, at any time when, by virtue of r 38, that vessel or class of vessels may be exempted from that provision: Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 4(2). For these purposes, 'date of entry into force of the Regulations' in the International Regulations for Preventing Collisions at Sea 1972 r 38 (exemptions) means, in the case of a vessel registered outside the United Kingdom, the date of entry into force of the International Regulations for Preventing Collisions at Sea 1972 for the state whose flag the vessel is entitled to fly: see the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 1(5). As to the meaning of 'United Kingdom' see PARA 17 note 3.

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719. Exemptions.

The Secretary of State¹ may exempt any ship² or description of ships from all or any of the provisions governing distress signals and the prevention of collisions³, which relate to the number, position, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances if he is satisfied that compliance with such provision is either impractical or unreasonable in the case of that ship or description of ships in such terms, if any, as he may specify and may, subject to giving reasonable notice, alter or cancel any such exemption⁴.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'ships' see PARA 716 note 3.

3 I.e. the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75 (see PARAS 716-718, 1196): see reg 5.

4 Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 5.

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(2) THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA 1972

(i) In general

720. Application of the rules of the International Regulations for Preventing Collisions at Sea 1972.

The rules of the International Regulations for Preventing Collisions at Sea 1972¹ apply to all vessels² upon the high seas and in all waters connected therewith navigable by sea-going vessels³.

Nothing in those rules interferes with the operation of special rules duly made by an appropriate authority for roadsteads, harbours, rivers, lakes or inland waterways connected with the high seas and navigable by sea-going vessels; but such special rules must conform as closely as possible to the Collision Regulations 1972⁴. If there is conflict between a local rule and one of the rules of the Collision Regulations 1972, the local rule prevails⁵. Where local rules make no provision at all, they are to be supplemented by the Collision Regulations 1972, but this is not to be done where a local rule provides adequately for a situation although differently from the general regulations⁶. A local rule which has not been duly made by a competent authority may nevertheless represent a standard of care to which seamen should conform⁷; and well-recognised practice and long usage may give such a rule the force of law⁸.

Nothing in the rules interferes with the operation of any special rules made by the government of any state with respect to additional station or signal lights, shapes or whistle signals for ships of war and vessels proceeding under convoy, or with respect to additional station or signal lights for fishing vessels engaged in fishing⁹ as a fleet¹⁰. These additional station or signal lights, shapes or whistle signals must, so far as possible, be such that they cannot be mistaken for any light, shape or signal authorised elsewhere under the rules¹¹.

Traffic separation schemes may be adopted by the International Maritime Organisation¹² for the purpose of the rules¹³.

Whenever the government concerned has determined that a vessel of any special construction or purpose cannot comply fully with the provisions of any of the rules with respect to the number, position, range or arc of visibility of lights or shapes¹⁴, as well as to the disposition and characteristics of sound-signalling appliances¹⁵, such vessel must comply with such other provisions in regard to the number, position, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, as her government has determined to be the closest possible compliance with the rules in respect of that vessel¹⁶.

¹ As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 For these purposes, 'vessel' includes every description of water craft, including non-displacement craft, wing-in-ground (WIG) craft and seaplanes, used or capable of being used as a means of transportation on water (Collision Regulations 1972 r 3(a)); 'seaplane' includes any aircraft designed to manoeuvre on the water (r 3(e)); and 'wing-in-ground (WIG) craft' means a multimodal craft which, in its main operational mode, flies in close proximity to the surface by utilizing surface-effect action (r 3(m)).

The Collision Regulations 1972, whilst not applying to a jet-ski, contain a standard of care to which the driver of a jet-ski should conform: see *Steedman v Scofield* [1992] 2 Lloyd's Rep 163. As to fishing boats and collision regulations see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 794.

3 Collision Regulations 1972 r 1(a). As to exemptions from the Collision Regulations 1972 in favour of any vessel or class of vessels, the keel of which was laid or which was at a corresponding stage of construction before the date of entry into force of the Regulations, provided that she complies with the requirements of the International Regulations for Preventing Collisions at Sea 1960 (revoked), see the Collision Regulations 1972 r 38(a)-(h). As to the meaning of 'date of entry into force of the Regulations' in r 38 (exemptions) see PARA 718 note 3.

4 Collision Regulations 1972 r 1(b).

5 *The Carlotta* [1899] P 223, 8 Asp MLC 544.

6 *The Carlotta* [1899] P 223, 8 Asp MLC 544; *The Bitinia* [1912] P 186, 12 Asp MLC 237 (affd 82 LJP 8, CA); *The Ceylon* [1920] P 187, 15 Asp MLC 100.

7 *The Humbergate* [1952] 1 Lloyd's Rep 168.

8 *Imperial Royal Privileged Danubian Steam Navigation Co v Greek and Oriental Steam Navigation Co, The Smyrna* (1864) 2 Moo PCCNS 435.

9 For these purposes, 'vessel engaged in fishing' means any vessel fishing with nets, lines, trawls or other fishing apparatus which restrict manoeuvrability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict manoeuvrability: Collision Regulations 1972 r 3(d).

10 Collision Regulations 1972 r 1(c).

11 Collision Regulations 1972 r 1(c).

12 As to the International Maritime Organisation see PARA 13.

13 Collision Regulations 1972 r 1(d). As to traffic separation schemes see PARA 730.

14 As to lights and shapes see PARA 739 et seq.

15 As to sound-signalling equipment see PARA 751 et seq.

16 Collision Regulations 1972 r 1(e).

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721. Construction of the rules.

The International Regulations for Preventing Collisions at Sea 1972¹ are issued for the guidance of seafarers and are to be construed literally and with seamanlike knowledge². They are not to be construed according to the strictest and nicest interpretation of language but are to be given the same kind of reasonable and business interpretation as in an Act of Parliament which regulates some large trade or business³.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 *The Libra* (1881) 6 PD 139 at 142, 4 Asp MLC 439 at 440, CA; *The Dunelm* (1884) 9 PD 164, 5 Asp MLC 304, CA.

3 *The Dunelm* (1884) 9 PD 164 at 171, 5 Asp MLC 304 at 308, CA. As the Collision Regulations 1972 are of an international character, they have in many cases been judicially construed in the courts of foreign countries: see eg *The Sylvester Hale (The Schooner)* (1873) 6 Benedict United States District Court Reporter 523 (where it was said to be of paramount importance that they should be understood alike by all nations).

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722. Responsibility under the rules.

Nothing in the rules of the International Regulations for Preventing Collisions at Sea 1972¹ exonerates any vessel² (or her owner, master or crew) from the consequences of any neglect to comply with the rules or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case³.

In construing and complying with the rules, due regard must be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from the rules necessary to avoid immediate danger⁴.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

3 Collision Regulations 1972 r 2(a). As to the rules of good seamanship see PARA 758 et seq.

4 Collision Regulations 1972 r 2(b).

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723. Infringement of the rules and breaches of duty.

Although a ship may have infringed the International Regulations for Preventing Collisions at Sea 1972¹, the onus is on the party setting up a case of negligence against the ship to prove breach of duty and damage².

When radar is installed, there is no duty to use it at common law³ but, under the rules of the Collision Regulations 1972, proper use must be made of radar, if fitted and operational, to obtain early warning of the risk of collision⁴. The use of radar may justify a speed that would otherwise be excessive⁵. Radar must be used in an intelligent and seamanlike manner, and failure so to use it is negligence⁶. Where, however, there is clear visibility, failure to make radar observations on the alteration of another vessel's course is not necessarily negligence⁷. Failure to obtain the information available from a port radar installation when navigating in a river in fog has been held to be negligence⁸.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 See *SS Heranger (Owners) v SS Diamond (Owners)* [1939] AC 94 at 104, 62 LI L Rep 204 at 211, HL (where the actual default in question was merely a breach of the rules of good seamanship). See also *SS Heranger (Owners) v SS Diamond (Owners)* at 100 and at 209. However, the court considered to be incorrect the view (which had been expressed in *The Aeneas* [1935] P 128 at 131, 18 Asp MLC 571 at 575, on the authority of certain cases decided before the Maritime Conventions Act 1911 (repealed)) that those guilty of a breach of a rule contained in the collision regulations or a local rule must show affirmatively that their default did not contribute to the collision or the resulting loss: *SS Heranger (Owners) v SS Diamond (Owners)* at 104, 105 and at 211, 212. The grounds for holding this view to be incorrect were that it was contrary to: (1) the principle that only faults which contribute to the accident are to be taken into account in apportioning liability under what is now the Merchant Shipping Act 1995 s 187 (see PARA 800); and (2) the general principle of the law of negligence that the claimant must show both breach of duty and consequent damage (*SS Heranger (Owners) v SS Diamond (Owners)* at 104 and at 211). For instances of cases decided before the Maritime Conventions Act 1911 (repealed), in which no statutory presumption of fault was applicable but breach of collision regulations or local rules was treated as throwing on those in default the burden of exonerating themselves, see *The Fenham* (1870) LR 3 PC 212 at 216; *Cayzer, Irvine & Co, SS Clan Sinclair (Owners) v Carron Co, SS Margaret (Owners)* (1884) 9 App Cas 873 at 886, 887, 5 Asp MLC 371 at 374, 375, HL. Cf *The Raithwaite Hall* (1874) 2 Asp MLC 210 at 212; and *Cayzer, Irvine & Co, SS Clan Sinclair (Owners) v Carron Co, SS Margaret (Owners)* at 882, 883 and at 373. For an instance since the passing of the Maritime Conventions Act 1911 (repealed), in which it was suggested that the onus was on a wrongdoer to show that his default had not contributed to the collision, see *SS Haugland (Owners) v SS Karamea (Owners)* [1922] 1 AC 68 at 75, 15 Asp MLC 430 at 432, HL (onus on vessel failing to give whistle signal to show that it would not have been heard); but cf *Haugland (Owners) v Karamea (Owners)* at 74, 77 and at 432, 433. As to the burden of proof in collision cases and the circumstances in which it may shift to the defendant see further PARA 786.

3 *The Verena* [1960] 2 Lloyd's Rep 286 (revsd on another ground [1961] 2 Lloyd's Rep 127, CA); but see *The Esso Plymouth* [1955] 1 Lloyd's Rep 429 at 437; *The Greathope* [1957] 2 Lloyd's Rep 197 at 204, 205.

4 See the Collision Regulations 1972 r 7(b); and PARA 726.

5 *The Kurt Arlt SS Petrel (Owners) v SS Kurt Arlt (Owners)* [1962] 2 All ER 27, [1962] 1 Lloyd's Rep 31, sub nom *Petrel (Owners) v Kurt Arlt (Owners)*, *The Kurt Arlt* [1962] 1 WLR 439. As to the use of radar to determine a safe speed see the Collision Regulations 1972 r 6(b); and PARA 725.

6 *The Anna Salen* [1954] 1 Lloyd's Rep 475 at 488; *The Nora* [1956] 1 Lloyd's Rep 617; *The Guildford* (as reported in [1956] 2 Lloyd's Rep 74 at 80); *The Evje* [1960] 2 Lloyd's Rep 221. See also *The British Aviator* (1965) 109 Sol Jo 215, CA (collision caused by defective radar observations).

7 *The Thomaseverett* [1981] 1 Lloyd's Rep 1, CA.

8 *The Indus* [1957] 1 Lloyd's Rep 335; *The Vechtstroom* [1964] 1 Lloyd's Rep 118.

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(ii) Steering and Sailing Rules of the International Regulations for Preventing Collisions at Sea 1972

A. CONDUCT OF VESSELS IN ANY CONDITION OF VISIBILITY

724. Requirement to maintain a proper look-out.

Under the International Regulations for Preventing Collisions at Sea 1972¹, every vessel² must at all times maintain a proper look-out³ by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision⁴.

This rule applies in any condition of visibility⁵.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

3 As to the rules of good seamanship concerning the keeping of a look-out see PARA 768.

4 Collision Regulations 1972 r 5. As to the risk of collision see PARA 726.

5 Collision Regulations 1972 r 4. As to the conduct of vessels in restricted visibility see PARA 738.

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725. Safe speed.

Under the International Regulations for Preventing Collisions at Sea 1972¹, every vessel² must at all times proceed at a safe speed³ so that she can take proper and effective action to avoid collision⁴ and be stopped within a distance appropriate to the prevailing circumstances and conditions⁵. This rule applies in any condition of visibility⁶.

In determining a safe speed, the following factors must be among those taken into account by all vessels⁷:

- 914 (1) the state of visibility⁸;
- 915 (2) the traffic density including concentrations of fishing vessels or any other vessels⁹;
- 916 (3) the manoeuvrability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions¹⁰;
- 917 (4) at night the presence of background light such as from shore lights or from back scatter of her own lights¹¹;
- 918 (5) the state of wind, sea and current, and the proximity of navigational hazards¹²;
- 919 (6) the draught in relation to the available depth of water¹³.

The following additional factors must be taken into account by vessels with operational radar¹⁴:

- 920 (a) the characteristics, efficiency and limitations of the radar equipment¹⁵;
- 921 (b) any constraints imposed by the radar range scale in use¹⁶;
- 922 (c) the effect on radar detection of the sea state, weather and other sources of interference¹⁷;
- 923 (d) the possibility that small vessels, ice and other floating objects may not be detected by radar at an adequate range¹⁸;
- 924 (e) the number, location and movement of vessels detected by radar¹⁹;
- 925 (f) the more exact assessment of the visibility that may be possible when radar is used to determine the range of vessels or other objects in the vicinity²⁰.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

3 As to the rules of good seamanship concerning speed see PARA 769.

4 As to rules under the Collision Regulations 1972 regarding action taken to avoid collision see PARA 727.

5 Collision Regulations 1972 r 6.

6 Collision Regulations 1972 r 4. As to the conduct of vessels in restricted visibility see PARA 738.

- 7 Collision Regulations 1972 r 6(a).
- 8 Collision Regulations 1972 r 6(a)(i).
- 9 Collision Regulations 1972 r 6(a)(ii). As to the meaning of 'vessel engaged in fishing' for these purposes see PARA 720 note 9.
- 10 Collision Regulations 1972 r 6(a)(iii).
- 11 Collision Regulations 1972 r 6(a)(iv).
- 12 Collision Regulations 1972 r 6(a)(v).
- 13 Collision Regulations 1972 r 6(a)(vi).
- 14 Collision Regulations 1972 r 6(b). As to radar generally see PARA 723.
- 15 Collision Regulations 1972 r 6(b)(i).
- 16 Collision Regulations 1972 r 6(b)(ii).
- 17 Collision Regulations 1972 r 6(b)(iii).
- 18 Collision Regulations 1972 r 6(b)(iv).
- 19 Collision Regulations 1972 r 6(b)(v).
- 20 Collision Regulations 1972 r 6(b)(vi).

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726. Risk of collision.

Under the International Regulations for Preventing Collisions at Sea 1972¹, every vessel² must use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists³. If there is any doubt, such risk is deemed to exist⁴. This rule applies in any condition of visibility⁵.

Proper use must be made of radar equipment⁶, if fitted and operational, including long-range scanning to obtain early warning of the risk of collision and radar plotting or equivalent systematic observation of detected objects⁷. Assumptions must not be made on the basis of scanty information, especially scanty radar information⁸.

In determining if the risk of collision exists⁹, the following considerations must be among those taken into account¹⁰:

- 926 (1) risk of collision is deemed to exist if the compass bearing of an approaching vessel does not appreciably change¹¹;
- 927 (2) such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range¹².

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

3 Collision Regulations 1972 r 7(a). Cf *The Stanmore* (1885) 10 PD 134, 5 Asp MLC 441, CA (where it was held that, if it is probable that a vessel has done something to cause a risk of collision, such a risk should be assumed to exist). As to action to avoid collision see PARA 727.

4 Collision Regulations 1972 r 7(a). The rules of the Collision Regulations 1972 are designed not only to prevent collisions but also to prevent even the risk of collisions: see *The Beryl* (1884) 9 PD 137 at 140, 5 Asp MLC 321 at 323, CA.

5 Collision Regulations 1972 r 4. As to the conduct of vessels in restricted visibility see PARA 738.

6 As to radar generally see PARA 723.

7 Collision Regulations 1972 r 7(b).

8 Collision Regulations 1972 r 7(c).

9 The question whether risk of collision exists is a matter partly of nautical experience and partly of law: see *The Mangerton* (1856) Sw 120.

10 Collision Regulations 1972 r 7(d).

11 Collision Regulations 1972 r 7(d)(i).

12 Collision Regulations 1972 r 7(d)(ii).

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727. Action to avoid collision.

Under the International Regulations for Preventing Collisions at Sea 1972¹, any action taken to avoid collision must, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship². Any alteration of course and/or speed to avoid collision must, if the circumstances of the case admit, be large enough to be readily apparent to another vessel³ observing visually or by radar⁴; a succession of small alterations of course and/or speed should be avoided⁵. If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation⁶ provided that it is made in good time, is substantial and does not result in another close-quarters situation⁷.

Action taken to avoid collision with another vessel must be such as to result in passing at a safe distance⁸. The effectiveness of the action must be carefully checked until the other vessel is finally past and clear⁹.

If necessary to avoid collision or allow more time to assess the situation, a vessel must slacken her speed or take all way off by stopping or reversing her means of propulsion¹⁰.

A vessel which is required¹¹ not to impede the passage or safe passage of another vessel must, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel¹². A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and must, when taking action, have full regard to the action which may be required¹³ by the steering and sailing rules¹⁴. A vessel the passage of which is not to be impeded remains fully obliged to comply with the steering and sailing rules¹⁵ when the two vessels are approaching one another so as to involve risk of collision¹⁶.

This rule applies in any condition of visibility¹⁷.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 Collision Regulations 1972 r 8(a). In addition, any action so taken must be in accordance with the rules of Pt B (rr 4-19) (steering and sailing rules) (see PARAS 724-726, 728 et seq): see r 8(a). As to the rules of good seamanship in particular see PARA 758 et seq.

3 As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

4 Collision Regulations 1972 r 8(b). As to radar generally see PARA 723. See also *The Sanshin Victory* [1980] 2 Lloyd's Rep 359.

5 Collision Regulations 1972 r 8(b).

6 What constitutes a close-quarters situation depends on the size, characteristics and speed of the ships concerned: see *The Verena* [1961] 2 Lloyd's Rep 127 at 133, CA, per Willmer LJ.

- 7 Collision Regulations 1972 r 8(c).
- 8 Collision Regulations 1972 r 8(d).
- 9 Collision Regulations 1972 r 8(d).
- 10 Collision Regulations 1972 r 8(e). As to what is a safe speed see PARA 725.
- 11 le by any of the rules of the Collision Regulations 1972 (see PARAS 724-726, 728 et seq): see r 8(f)(i).
- 12 Collision Regulations 1972 r 8(f)(i).
- 13 le by the rules of the Collision Regulations 1972 Pt B (rr 4-19) (see PARAS 724-726, 728 et seq): see r 8(f)
(ii).
- 14 Collision Regulations 1972 r 8(f)(ii).
- 15 le the Collision Regulations 1972 Pt B (rr 4-19) (see PARAS 724-726, 728 et seq): see r 8(f)(iii).
- 16 Collision Regulations 1972 r 8(f)(iii).
- 17 Collision Regulations 1972 r 4. As to the conduct of vessels in restricted visibility see PARA 738.

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728. The narrow channel rule.

Under the International Regulations for Preventing Collisions at Sea 1972¹, a vessel² proceeding along the course of a narrow channel³ or fairway⁴ must keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable⁵. A vessel of less than 20 metres in length⁶ or a sailing vessel⁷ must not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway⁸. A vessel engaged in fishing⁹ must not impede the passage of any other vessel navigating within a narrow channel or fairway¹⁰.

A vessel must not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within such channel or fairway¹¹. The latter vessel may use the appropriate sound signal¹² if in doubt as to the intention of the crossing vessel¹³.

In a narrow channel or fairway, when overtaking¹⁴ can take place only if the vessel to be overtaken has to take action to permit safe passing, the vessel intending to overtake must indicate her intention by sounding the appropriate signal¹⁵. The vessel to be overtaken must, if in agreement, sound the appropriate signal¹⁶ and take steps to permit safe passing¹⁷. If in doubt, she may sound the signals appropriate for that circumstance instead¹⁸.

A vessel nearing a bend or an area of a narrow channel or fairway where other vessels may be obscured by an intervening obstruction must navigate with particular alertness and caution and must sound the appropriate warning signal¹⁹.

Any vessel must, if the circumstances of the case admit, avoid anchoring in a narrow channel²⁰. This rule applies in any condition of visibility²¹.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

3 As to the meaning of 'narrow channel' see PARA 729.

4 Wherever there is an open navigable passage used by vessels proceeding up and down a river or channel, that may be said to be a 'fairway': see *The Blue Bell* [1895] P 242 at 264, 7 Asp MLC 601 at 602, DC. See also *The Clutha Boat 147* [1909] P 36, 11 Asp MLC 199; and *The Lake Farragut* [1921] P 305. Cf *The Turquoise* [1908] P 148, 11 Asp MLC 28 (where a vessel lying moored outside another vessel at a wharf was held not to be in or near a fairway).

5 Collision Regulations 1972 r 9(a). This rule is known as the 'narrow channel rule'. See *Pelopidas (owners) v TRSL Concord (owners)* [1999] 2 Lloyd's Rep 675, [1999] 2 All ER (Comm) 737 (in apportioning liability, the preponderate feature of the lead up to collision was a breach of the Collision Regulations 1972 r 9).

6 For these purposes, 'length' of a vessel means her length overall: Collision Regulations 1972 r 3(j).

7 For these purposes, 'sailing vessel' means any vessel under sail provided that propelling machinery, if fitted, is not being used: Collision Regulations 1972 r 3(c).

- 8 Collision Regulations 1972 r 9(b).
- 9 As to the meaning of 'vessel engaged in fishing' see PARA 720 note 9.
- 10 Collision Regulations 1972 r 9(c).
- 11 Collision Regulations 1972 r 9(d).
- 12 Ie the signal prescribed in the Collision Regulations 1972 r 34(d) (see PARA 752): see r 9(d).
- 13 Collision Regulations 1972 r 9(d).
- 14 Collision Regulations 1972 r 9 does not relieve the overtaking vessel of her obligation under r 13 (overtaking) (see PARA 732): r 9(e)(ii).
- 15 Collision Regulations 1972 r 9(e)(i). The appropriate signal referred to in the text is that prescribed in r 34(c)(i) (see PARA 752): see r 9(e)(i).
- 16 Ie the signal prescribed by the Collision Regulations 1972 r 34(c)(ii) (see PARA 752): see r 9(e)(i).
- 17 Collision Regulations 1972 r 9(e)(i).
- 18 Collision Regulations 1972 r 9(e)(i). The appropriate signals referred to in the text are those prescribed in r 34(d) (see PARA 752): see r 9(e)(i).
- 19 Collision Regulations 1972 r 9(f). The appropriate signal referred to in the text is that prescribed in r 34(e) (see PARA 752): see r 9(f).
- 20 Collision Regulations 1972 r 9(g).
- 21 Collision Regulations 1972 r 4. As to the conduct of vessels in restricted visibility see PARA 738.

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729. Meaning of 'narrow channel'.

Prima facie, 'narrow channel'¹ means a channel bounded on either side by land, so that a vessel² cannot navigate in any great width between the two banks; it is opposed to 'at sea'³. A narrow channel must have two boundaries which are close to one another; a stretch of water which on one side is open to an indefinite extent cannot be a narrow channel⁴. The court will not lay down what particular width or length will constitute a narrow channel⁵, but, while a narrow channel is of necessity comparatively small in breadth, it may also be very short in length⁶. An entrance between the piers of a harbour has more than once been held to be a narrow channel⁷. In view of its object, which is the prevention of risk of collision⁸, there is as much reason to apply the 'narrow channel rule'⁹ to such an entrance as to a longer channel¹⁰.

When such an entrance or opening is a narrow channel, the duty to keep to the starboard side applies in so much of the water inside and outside of the entrance as is required for manoeuvring for the entrance¹¹.

Although physical conditions remain the same, the alteration in lights and other marks which affect navigation sometimes makes a part of a large piece of water into a narrow channel¹².

There have been many decisions of the courts as to whether particular waters are narrow channels. These decisions relate both to the territorial waters of the United Kingdom¹³ and to Commonwealth¹⁴, Irish¹⁵ and foreign waters¹⁶. In some instances, while not deciding that certain waters were a narrow channel, the courts have held that vessels should navigate in them as if the narrow channel rule applied¹⁷.

The narrow channel rule is to be construed with reasonable latitude. Some allowance has to be made for tide, locality and wind and for the case of a vessel being in tow¹⁸. Although the court might be of the opinion that the vessel might have kept 50 yards closer to the proper shore of the river, it may refuse to look at a question of a few yards more or less¹⁹.

1 For particular waters which have been held to be narrow channels see the text and notes 7, 12-17.

2 As to the meaning of 'vessel' in the International Regulations for Preventing Collisions at Sea 1972 see PARA 720 note 2. As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

3 *The Florence Nightingale and The Maeander* (1863) 1 Mar LC 301, PC, per Dr Lushington.

4 *The Treherbert* [1934] P 31 at 46, 47, 18 Asp MLC 458 at 468, CA.

5 *Scicluna v Stevenson, The Rhondda* (1883) 8 App Cas 549 at 552, 5 Asp MLC 114 at 117, PC. Whether a space of water is a narrow channel may be entirely a question of fact: *Australian Steam Navigation Co v Smith & Sons* (1889) 14 App Cas 318, PC.

6 *The Kaiser Wilhelm der Grosse* [1907] P 259 at 263, 10 Asp MLC 504 at 506, CA.

7 See *The Kaiser Wilhelm der Grosse* [1907] P 259, 10 Asp MLC 504, CA.

8 As to the risk of collision see PARA 726.

9 le the Collision Regulations 1972 r 9(a) (as to which see PARA 728).

10 *The Kaiser Wilhelm der Grosse* [1907] P 259 at 264, 10 Asp MLC 504 at 506, CA. The question whether the rule applies to an opening between buoys or lightships does not depend on whether there is a dredged channel there or not: *The Kaiser Wilhelm der Grosse*.

11 *The Kaiser Wilhelm der Grosse* [1907] P 36 at 44, 10 Asp MLC 361 at 364 per Gorell Barnes P; *The Knaresbro* (1900) [1907] P 38n. Even apart from the narrow channel rule, a vessel going out of or coming into a narrow harbour entrance ought not to cross the entrance so close as not to leave room for vessels going the other way, but ought to make a wide sweep so as to leave them a fairway: *The Harvest* (1886) 11 PD 90, 6 Asp MLC 5, CA. In a harbour where there was a rule to the effect that a vessel when proceeding out or in should be kept to the right of mid-channel and two buoys really marked the entrance to the channel, although there was sufficient water for vessels to go outside the buoys, it was held that a vessel ought to round in so as to enter either on the right side of the channel marked by the buoys, or outside the right-hand buoy: *The Winstanley* [1896] P 297, 8 Asp MLC 170, CA.

12 *The Gustafsberg* [1905] P 10 at 19, 10 Asp MLC 61 at 65.

13 The following have been held to be narrow channels: the Firth of Forth, from the Forth Bridge upwards (*Screw Collier Co v Webster (or Kerr)* [1910] AC 165, HL); the Firth of Clyde as far down the fairway as to a line drawn from the Cloch Lighthouse to the Gantocks Beacon (*Clyde Navigation Trustees v Wilhelmsen* 1915 SC 392); the River Humber, between the Bull and Clee Ness buoys on the south side and the buoys on the north side (*The Ashton* [1905] P 21, 10 Asp MLC 88); in the River Thames, the Swin channel on each side of the Swin Middle lightship (*The Oporto* [1897] P 249, CA; cf *The Minnie* [1894] P 336, 7 Asp MLC 521, CA; *The Corennie* [1894] P 338n); and a space of water in Sea Reach between four red conical lighted buoys and the Nore Sand buoys to the south of them (*The Gustafsberg* [1904] P 10 at 20, 10 Asp MLC 61 at 65); the Solent (*The Assaye* [1905] P 289 at 291, 10 Asp MLC 183 at 184); Falmouth harbour just inside the entrance (*The Clydach* (1884) 5 Asp MLC 336); the Bristol Channel in the neighbourhood of the English and Welsh grounds (*The Brooklyn City* (1885) 2 Pritchard's Admiralty Digest (3rd Edn) 2371); Cardiff Drain near Roath Basin channel, in the case of very small vessels (*The Leverington* (1886) as reported in 6 Asp MLC 7, CA; as to larger vessels cf *The Red Cross* (1907) 10 Asp MLC 521); in Cardiff entrance harbour, the passage up from the Outer Wrach buoy (*Admiral Codrington v Canadian Raider* (1921) 9 Ll L Rep 477); Swansea entrance channel (*The Prince Leopold de Belgique* [1909] P 103, 11 Asp MLC 203); North Lowestoft (*The Ravenna* [1918] P 297, CA; cf *The Try Again* (1908) Shipping Gazette, 2 June, where the court refused to determine whether North Lowestoft Roads was a narrow channel). A passage between lines of buoys in a river, eg the Mersey, may be a narrow channel: *Dredger No 9 (Owners) v Wheatear* (1920) 3 Ll L Rep 229. The channel near the Bell buoy outside the Queen's channel of the Mersey was, however, held not to be a narrow channel: *The Florence Nightingale, The Maeander* (1863) 1 Mar LC 301, PC. Lerwick harbour in the Shetland Isles, except possibly its northern and southern entrances (*The Seymolicus* [1909] P 109, 11 Asp MLC 206) and the passage between Duncansby Head and the Skerries in the Pentland Firth (*The Anna Salen* [1954] 1 Lloyd's Rep 475), are not narrow channels.

14 In Canadian waters, the roadstead of Sydney harbour, Cape Breton, has been held to be a narrow channel: see *The Santanderino* (1893) 3 Exch CR 378; *The Cuba v McMillan* (1869) 26 SCR 651 (decided under a Canadian Act). As regards the south channel of the St Lawrence river, near the Margaret Tail buoy and not far from Quebec, it was held that vessels ought to navigate as if it were a narrow channel, even though it was not decided to be one: *The Corinthian* [1909] P 260 at 265, 266, 11 Asp MLC 208 at 211, CA. The Narrows outside Vancouver appears to be a narrow channel: see *Bryce v Canadian Pacific Rly Co* (1908) 13 BCR 446 (the point was admitted). In Queensland, the space between cuttings Nos 5 and 6 of the Brisbane River was held by the Chief Justice not to be a narrow channel within a Queensland Act: *Australian Steam Navigation Co v Smith & Sons* (1889) 14 App Cas 318, PC.

15 The entrance channel of Cobh (Queenstown) harbour is a narrow channel: *The Glengariff* [1905] P 106, 10 Asp MLC 103.

16 In foreign waters, the following have been held to be narrow channels: the River Scheldt near the Kattendyk dock, Antwerp (*The Whitlieburn* (1900) 9 Asp MLC 154); a swift channel in the Scheldt estuary (*The Edison Mariner* [1955] 1 Lloyd's Rep 235); Cherbourg harbour entrance (*The Kaiser Wilhelm der Grosse* [1907] P 259, 10 Asp MLC 504, CA); the Strait of Messina (*Scicluna v Stevenson, The Rhondda* (1883) 8 App Cas 549, 5 Asp MLC 114, PC); the Sulina arm of the Danube (*SS Diana v SS Clieveden, The Clieveden* [1894] AC 625 at 629, PC); the Great Bitter Lake, Suez Canal, near the northern entrance to the dredged channel (*The Knaresbro* (1900) [1907] P 38n); the Bosphorus (*The Fiumana* (1931) 39 Ll L Rep 32 at 34); and Ambrose Channel in the approaches to New York harbour (*The Sedgpool* [1956] 2 Lloyd's Rep 668). The inner harbour of Boston, Massachusetts, has been held not to be a narrow channel: see *SS Calvin Austin v Lovitt* (1905) 35 SCR 616 (decided under the United States Inland Rules r 25, to prevent collisions, in similar terms to the English narrow channel rule). The court has refused to hold on the evidence before it in a particular case that Copenhagen

Sound in the way of the Lappgrund light vessel is, or is to be treated as, a narrow channel: *The Varmdo* [1940] P 15 (affd [1940] P 137, 19 Asp MLC 370, CA), when the decision of the court below on this point was not contested.

17 *The Ashton* [1905] P 21, 10 Asp MLC 88; *The Try Again* (1908) Shipping Gazette, 2 June; *The Corinthian* [1909] P 260 at 266, 11 Asp MLC 208 at 211.

18 *The La Plata* (1857) Sw 220 at 222; revsd Sw 298, PC. See also *The Ravenna* [1918] P 297, CA; *The Prinses Juliana* [1936] P 139 at 152, [1936] 1 All ER 685 at 660, 18 Asp MLC 614 at 619 (local byelaw which required vessel navigating against tide to ease speed and, if necessary, wait before rounding bend; state of tide and length of vessel taken into account).

19 *The Sylph* (1854) 2 Ecc & Ad 75 at 81.

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730. Traffic separation schemes.

Special provisions of the International Regulations for Preventing Collisions at Sea 1972¹ apply to traffic separation schemes adopted by the International Maritime Organisation².

Accordingly, a vessel using a traffic separation scheme must³:

- 928 (1) proceed in the appropriate traffic lane in the general direction of traffic flow for that lane⁴;
- 929 (2) so far as practicable keep clear of a traffic separation line or separation zone⁵;
- 930 (3) normally join or leave a traffic lane at the termination of the lane, but, when joining or leaving from the side, must do so at as small an angle to the general direction of traffic flow as practicable⁶.

A vessel must, so far as practicable, avoid crossing traffic lanes, but, if obliged to do so, must cross on a heading as nearly as practicable at right angles to the general direction of traffic flow⁷.

A vessel must not use an inshore traffic zone when she can safely use the appropriate traffic lane within the adjacent traffic separation scheme⁸; but vessels of less than 20 metres in length⁹, sailing vessels¹⁰ and vessels engaged in fishing¹¹ may use the inshore traffic zone¹². A vessel may¹³ use an inshore traffic zone when en route to or from a port, offshore installation or structure, pilot station or any other place situated within the inshore traffic zone, or to avoid immediate danger¹⁴.

A vessel, other than a crossing vessel or a vessel joining or leaving a lane, must not normally enter a separation zone or cross a separation line¹⁵, except:

- 931 (a) in cases of emergency to avoid immediate danger¹⁶;
- 932 (b) to engage in fishing within a separation zone¹⁷.

A vessel navigating in areas near the termination of traffic separation schemes must do so with particular caution¹⁸; and a vessel must so far as practicable avoid anchoring in a traffic separation scheme or in areas near its terminations¹⁹. A vessel not using a traffic separation scheme must avoid it by as wide a margin as is practicable²⁰. A vessel engaged in fishing must not impede the passage of any vessel following a traffic lane²¹. A vessel of less than 20 metres in length or a sailing vessel must not impede the safe passage of a power-driven vessel²² following a traffic lane²³.

A vessel restricted in her ability to manoeuvre²⁴ when engaged in an operation for:

- 933 (i) the maintenance of safety of navigation in a traffic separation scheme²⁵; or
- 934 (ii) the laying, servicing or picking up of a submarine cable, within a traffic separation scheme²⁶,

is exempted from complying with the traffic separation provisions²⁷ to the extent necessary to carry out the operation²⁸.

This rule applies in any condition of visibility²⁹.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 Collision Regulations 1972 r 10(a). As to the International Maritime Organisation see PARA 13. However, nothing in r 10 relieves any vessel of her obligation under any other rule of the Collision Regulations 1972: see r 10(a). As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

The traffic separation schemes which are referred to in r 10(a) are the schemes listed in Notice to Mariners No 17 and marked '*' in the margin: Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 1(4); Merchant Shipping Notice 1781(M) Introduction para 7(1). For these purposes, 'Notice to Mariners' means an Admiralty Notice to Mariners published by the Hydrographer of the Navy (Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 1(3)); and 'Hydrographer of the Navy' means the person for the time being appointed to that office by the Admiralty Board (reg 1(3)). 'Notice to Mariners No 17' means Notice to Mariners No 17 in the Annual Summary of Admiralty Notices to Mariners of 1989 and any subsequent Notice to Mariners containing like material which the Hydrographer of the Navy considers relevant from time to time, being a Notice to Mariners which: (1) replaces Admiralty Notice to Mariners No 17; or (2) replaces any subsequent Notice to mariners containing the like material; and a reference to any such subsequent Notice to Mariners includes a reference to any Notice to Mariners amending the same which the Hydrographer of the Navy considers relevant from time to time: Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 1(4).

3 Collision Regulations 1972 r 10(b).

4 Collision Regulations 1972 r 10(b)(i).

5 Collision Regulations 1972 r 10(b)(ii).

6 Collision Regulations 1972 r 10(b)(iii).

7 Collision Regulations 1972 r 10(c).

8 Collision Regulations 1972 r 10(d)(i).

9 As to the meaning of 'length' see PARA 728 note 6.

10 As to the meaning of 'sailing vessel' see PARA 728 note 7.

11 As to the meaning of 'vessel engaged in fishing' see PARA 720 note 9.

12 Collision Regulations 1972 r 10(d)(i).

13 Ie notwithstanding the Collision Regulations 1972 r 10(d)(i) (see the text and notes 8-12): see r 10(d)(ii).

14 Collision Regulations 1972 r 10(d)(ii).

15 Collision Regulations 1972 r 10(e).

16 Collision Regulations 1972 r 10(e)(i).

17 Collision Regulations 1972 r 10(e)(ii).

18 Collision Regulations 1972 r 10(f).

19 Collision Regulations 1972 r 10(g).

20 Collision Regulations 1972 r 10(h).

21 Collision Regulations 1972 r 10(i).

22 For these purposes, 'power-driven vessel' means any vessel propelled by machinery: Collision Regulations 1972 r 3(b).

23 Collision Regulations 1972 r 10(j).

24 For these purposes, 'vessel restricted in her ability to manoeuvre' means a vessel which from the nature of her work is restricted in her ability to manoeuvre as required by the rules of the Collision Regulations 1972 and is, therefore, unable to keep out of the way of another vessel: r 3(g). The term 'vessels restricted in their ability to manoeuvre' includes but is not limited to:

977 (1) a vessel engaged in laying, servicing or picking up a navigation mark, submarine cable or pipe-line (r 3(g)(i));

978 (2) a vessel engaged in dredging, surveying or underwater operations (r 3(g)(ii));

979 (3) a vessel engaged in replenishment or transferring persons, provisions or cargo while underway (r 3(g)(iii));

980 (4) a vessel engaged in the launching or recovery of aircraft (r 3(g)(iv));

981 (5) a vessel engaged in mine-clearance operations (r 3(g)(v));

982 (6) a vessel engaged in a towing operation such as severely restricts the towing vessel and her tow in their ability to deviate from their course (r 3(g)(vi)).

'Underway' means that a vessel is not at anchor, or made fast to the shore, or aground: r 3(i).

25 Collision Regulations 1972 r 10(k).

26 Collision Regulations 1972 r 10(l).

27 Is exempted from complying with Collision Regulations 1972 r 10: see r 10(k), (l).

28 See Collision Regulations 1972 r 10(k), (l).

29 Collision Regulations 1972 r 4. As to the conduct of vessels in restricted visibility see PARA 738.

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B. CONDUCT OF VESSELS IN SIGHT OF ONE ANOTHER

731. Rules applicable to sailing vessels.

Under the International Regulations for Preventing Collisions at Sea 1972¹, when two sailing vessels² are approaching one another, so as to involve risk of collision³, one of them must keep out of the way of the other⁴, as follows:

- 935 (1) when each has the wind on a different side, the vessel which has the wind on the port side must keep out of the way of the other⁵;
- 936 (2) when both have the wind on the same side, the vessel which is to windward⁶ must keep out of the way of the vessel which is to leeward⁷;
- 937 (3) if a vessel with the wind on the port side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the port or on the starboard side, she must keep out of the way of the other⁸.

This rule applies only to vessels in sight of one another⁹.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'sailing vessel' see PARA 728 note 7; and as to the meaning of 'vessel' for these purposes see PARA 720 note 2.

3 As to the risk of collision see PARA 726.

4 See the Collision Regulations 1972 r 12(a). The rules in the Collision Regulations 1972 Pt B (Steering and Sailing Rules) Section II (Conduct of vessels in sight of one another) (rr 11-18) (see also PARAS 732-737) must be strictly complied with; however, vessels are not prevented from taking sufficiently early action ahead of the point in time at which those rules come into effect: Merchant Shipping Notice 1781(M) Introduction para 6.

As to the conduct of power-driven vessels see PARAS 733, 734; and as to the conduct of vessels in restricted visibility see PARA 738.

5 Collision Regulations 1972 r 12(a)(i).

6 For these purposes, the windward side is deemed to be the side opposite to that on which the mainsail is carried or, in the case of a square-rigged vessel, the side opposite to that on which the largest fore-and-aft sail is carried: Collision Regulations 1972 r 12(b).

7 Collision Regulations 1972 r 12(a)(ii).

8 Collision Regulations 1972 r 12(a)(ii).

9 Collision Regulations 1972 r 11. For these purposes, vessels are deemed to be in sight of one another only when one can be observed visually from the other: Collision Regulations 1972 r 3(k).

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732. Overtaking rules.

Under the International Regulations for Preventing Collisions at Sea 1972¹, any vessel² overtaking any other must keep out of the way of the vessel being overtaken³. A vessel is deemed to be overtaking when coming up⁴ with another vessel from a direction more than 22.5 degrees abaft her beam (that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the sternlight⁵ of that vessel but neither of her sidelights)⁶. When a vessel is in any doubt as to whether she is overtaking another, she must assume that this is the case and act accordingly⁷.

Any subsequent alteration of the bearing between the two vessels does not make the overtaking vessel a crossing vessel⁸ or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear⁹.

This rule applies only to vessels in sight of one another¹⁰.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

3 Collision Regulations 1972 r 13(a). This rule applies notwithstanding anything contained in Pt B Section I (rr 4-10) (Conduct of vessels in any conditions of visibility) (see PARAS 724-730) and Section II (Conduct of vessels in sight of one another) (rr 11-18) (see also PARAS 731, 733-737): see r 13(a). As to the application of the Collision Regulations 1960 rr 23, 24 (revoked), which were in similar terms, see *The Frosta* [1973] 2 Lloyd's Rep 348; and as to the duty of the vessel being overtaken see PARA 736.

The rules in the Collision Regulations 1972 Pt B (Steering and Sailing Rules) Section II (Conduct of vessels in sight of one another) (rr 11-18) (see also PARAS 731, 733-737) must be strictly complied with; however, vessels are not prevented from taking sufficiently early action ahead of the point in time at which those rules come into effect: Merchant Shipping Notice 1781(M) Introduction para 6.

4 A vessel is deemed to be 'coming up' with another when there is some proximity in space between them even though there is no risk of collision at that time: *The Nowy Sacz* [1979] QB 236 at 246, 247, [1978] 2 All ER 297 at 303, [1977] 2 Lloyd's Rep 91 at 96, CA (overruling *The Banshee* (1887) 6 Asp MLC 221, CA, and *The Manchester Regiment* [1938] P 117, 60 Ll L Rep 279).

5 As to the meaning of 'sternlight' see PARA 740 note 7.

6 Collision Regulations 1972 r 13(b). As to the meaning of 'sidelights' see PARA 740 note 6.

7 Collision Regulations 1972 r 13(c).

8 Ie within the meaning of the Collision Regulations 1972: see r 13(d). As to the rule applicable in a crossing situation see PARA 734.

9 Collision Regulations 1972 r 13(d).

10 Collision Regulations 1972 r 11. As to when vessels are deemed to be in sight of one another see PARA 731 note 9.

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733. Head-on situation.

Under the International Regulations for Preventing Collisions at Sea 1972¹, when two power-driven vessels² are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision³, each must alter her course to starboard so that each pass on the port side of the other⁴. Such a situation is deemed to exist when a vessel sees the other ahead or nearly ahead and by night she could see the masthead lights⁵ of the other in a line or nearly in a line and/or both sidelights⁶ and by day she observes the corresponding aspect of the other vessel⁷. When a vessel is in any doubt as to whether such a situation exists, she must assume that it does exist and act accordingly⁸.

This rule applies only to vessels in sight of one another⁹.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'power-driven vessel' see PARA 730 note 22; and as to the meaning of 'vessel' for these purposes see PARA 720 note 2. As to the rules applicable to sailing vessels see PARA 731.

3 As to the risk of collision see PARA 726.

4 Collision Regulations 1972 r 14(a). The rules in the Collision Regulations 1972 Pt B (Steering and Sailing Rules) Section II (Conduct of vessels in sight of one another) (rr 11-18) (see also PARAS 731-732, 734-737) must be strictly complied with; however, vessels are not prevented from taking sufficiently early action ahead of the point in time at which those rules come into effect: Merchant Shipping Notice 1781(M) Introduction para 6.

5 As to the meaning of 'masthead light' see PARA 740 note 5.

6 As to the meaning of 'sidelights' see PARA 740 note 6.

7 Collision Regulations 1972 r 14(b).

8 Collision Regulations 1972 r 14(c).

9 Collision Regulations 1972 r 11. As to when vessels are deemed to be in sight of one another see PARA 731 note 9.

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734. The crossing rule.

Under the International Regulations for Preventing Collisions at Sea 1972¹, when two power-driven vessels² are crossing³ so as to involve risk of collision⁴, the vessel which has the other on her own starboard side must keep out of the way and, if the circumstances of the case admit, must avoid crossing ahead of the other vessel⁵. This rule applies only to vessels in sight of one another⁶.

If two vessels are on courses which, if maintained, will bring them to the same point at, or nearly at, the same moment, they are crossing for the purpose of this rule; but vessels are not so crossing if the course which is reasonably to be attributed to either vessel would keep her clear of the other⁷. Thus if, as a result of their both following the winding curves of the river, two vessels find themselves momentarily on courses which would, if pursued, cross, the crossing rule does not apply⁸.

Where two vessels are on crossing courses in open waters or the sea and each knows that the other is going to alter her course at about the same place but there is nothing that definitely settles where they will alter course, the crossing rule nevertheless applies. In such circumstances, however, as a matter of good seamanship the give-way vessel should give way clearly, presenting the stand-on vessel with the clearest indication that the give-way vessel means to get out of the way⁹. The fact that two vessels on crossing courses are both manoeuvring to take up a pilot is not of itself a special circumstance¹⁰ justifying departure from the crossing rule¹¹.

The crossing rule does not apply if it is not possible for the give-way vessel under the rule to appreciate that the other vessel is on a crossing course¹² and it seems that, if two vessels are within sight of one another and one of them, without observing the other, by her manoeuvres creates a situation in which the crossing rule would apply, the vessel creating the situation is not entitled to rely on the rule¹³.

Whether the crossing rule applies to the case of a vessel coming out of a dock into a river in which another vessel is passing up or down depends on whether or not the vessels sight one another at such a distance that they can each of them reasonably act under the crossing rule and so avoid collision¹⁴. When two vessels are approaching one another at a forked intersection in a narrow channel and bear from one another as if on crossing courses, it appears that they will be governed not by the crossing rule but by the narrow channel rule¹⁵, if it is reasonable to assume that their courses will not in fact cross or that one vessel will pass well ahead or astern of the other¹⁶. Where, however, the course of one vessel intersects the course of the other so that both will meet at about the point of intersection, both the 'narrow channel rule' and the 'crossing rule' apply, so that normally each vessel ought to keep to the starboard side of the channel¹⁷ in which she is and it is the duty of the vessel which has the other on her starboard side to keep out of the way¹⁸ and not to cross ahead¹⁹ of the other vessel and the duty of the other vessel²⁰ to keep her course and speed²¹.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972

referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'power-driven vessel' see PARA 730 note 22; and as to the meaning of 'vessel' for these purposes see PARA 720 note 2. As to the rules applicable to sailing vessels see PARA 731.

3 For the rules as to overtaking and meeting head on see PARAS 732, 733.

4 As to the risk of collision see PARA 726.

5 Collision Regulations 1972 r 15. The rules in the Collision Regulations 1972 Pt B (Steering and Sailing Rules) Section II (Conduct of vessels in sight of one another) (rr 11-18) (see also PARAS 731-733, 735-737) must be strictly complied with; however, vessels are not prevented from taking sufficiently early action ahead of the point in time at which those rules come into effect: Merchant Shipping Notice 1781(M) Introduction para 6.

6 Collision Regulations 1972 r 11. As to when vessels are deemed to be in sight of one another see PARA 731 note 9.

7 *Normandie (Owners of Norwegian SS) v Pekin (Owners of British SS), The Pekin* [1897] AC 532 at 536-537, 8 Asp MLC 367 at 368, PC; *SS Albano v Allan Line SS Co Ltd, Union Dampfschiffsrhederei AG v SS Parisian* [1907] AC 193 at 205, 10 Asp MLC 365 at 369, PC. Vessels continue to be crossing vessels until the crossing is completed: see *Orduna (Owners) v Shipping Controller* [1921] 1 AC 250, HL (where it was held that vessels were still crossing vessels, although the green light of one, after being originally observed on the port bow of the other, had passed to ahead or slightly to starboard of the bow of the first vessel); *Shipping Controller v Athena* (1923) 14 Ll L Rep 515 at 517, HL, per Lord Sumner (commenting on *Orduna (Owners) v Shipping Controller*).

8 *General Steam Navigation Co v Hedley, The Velocity* (1869) LR 3 PC 44; *Malcolmson v General Steam Navigation Co, The Ranger and The Cologne* (1872) LR 4 PC 519, 1 Asp MLC 484; *Normandie (Owners of Norwegian SS) v Pekin (Owners of British SS), The Pekin* [1897] AC 532, 8 Asp MLC 367, PC; *The Olympic and HMS Hawke* (1914) (as reported in 84 LJP 49 at 52, 12 Asp MLC 580 at 584, HL). It seems also that the crossing rule does not apply if two vessels are momentarily on crossing courses as a result of one of them altering course to avoid another vessel or an obstacle: see *The Oceano* (1878) 3 PD 60 at 63, CA. If one vessel is in fact crossing the river so that she will cross the course of the other and there is risk of collision, the crossing rule applies, unless it is ousted by a local rule: *The Oceano* (1878) 3 PD 60 at 63, CA; cf *The Esk and The Niord* (1870) LR 3 PC 436 at 442, 1 Asp MLC 1 at 3 (where the question whether the vessels, when they first sighted each other, were crossing vessels was left undecided). As to the relationship between the rules contained in the Collision Regulations 1972 and local rules see PARA 720.

9 *The Karemea* [1921] P 76 at 88, 15 Asp MLC 318 at 323. See also *The Homer* [1973] 1 Lloyd's Rep 501, CA.

10 Ie within the meaning of the Collision Regulations 1972 r 2, regarding allocations of responsibility (see PARA 722).

11 *SS Albano v Allan Line SS Co Ltd, Union Dampfschiffsrhederei AG v SS Parisian* [1907] AC 193 at 206, 10 Asp MLC 365 at 370, PC; *The Ada, The Sappho* (1873) 2 Asp MLC 4, PC.

12 *Lorentzen, as Director of Shipping and Curator of the Royal Norwegian Government v The Alcoa Rambler* [1949] AC 236, 82 Ll L Rep 359, PC.

13 *The Spyros* [1953] 1 Lloyd's Rep 501 at 509. See also *The Boynton* (1898) 14 TLR 173.

14 *The Gulf of Suez* [1921] P 318, 15 Asp MLC 328, CA; and see *The Sunlight* [1904] P 100, 9 Asp MLC 509; and *The Llanelly* [1914] P 40, 12 Asp MLC 485. In coming out of a dock a vessel ought to navigate with the greatest possible caution: *The Llanelly* at 43 and at 486. When two steam vessels, one going out and the other coming in, have to pass each other near the entrance of a canal or harbour where the 'narrow channel rule' (see PARA 728) applies, it appears that the 'crossing rule' does not apply, even though for a time the two vessels seem to be on crossing courses: *The Kaiser Wilhelm der Grosse* [1907] P 36 at 44, 10 Asp MLC 361 at 364 (on appeal [1907] P 259 at 263, 10 Asp MLC 504 at 506, CA). A vessel crossing a channel towards the entrance to a dock is not excused from keeping out of the way, under the crossing rule, of a vessel coming down the channel, on the grounds that she herself is bound for the dock and is carrying the appropriate docking signal: *The St Audries* (1886) 5 Asp MLC 552. The crossing rule may not apply in a confined space of water: *The Red Cross* (1907) 10 Asp MLC 521. See also *The Hazelmere* [1911] P 69, 11 Asp MLC 536, CA.

15 Ie the Collision Regulations 1972 r 9 (see PARA 728).

16 *Normandie (Owners of Norwegian SS) v Pekin (Owners of British SS), The Pekin* [1897] AC 532 at 537, 8 Asp MLC 367 at 368, PC. If one vessel comes to the point of intersection reasonably in advance of the other, it

appears that as a matter of good seamanship she should keep on whereas the other should wait until she has passed. If both vessels approach the point of intersection at the same time, they must act reasonably and it would be reasonable for the one with the tide against her to wait: *The Prince Leopold de Belgique* [1909] P 103 at 106, 11 Asp MLC 203 at 205.

17 le under the 'narrow channel rule' (see PARA 728).

18 le under the 'crossing rule' (see the text and notes 1-6).

19 See the Collision Regulations 1972 r 15; and the text and notes 1-5.

20 See PARA 736.

21 *The Ashton* [1905] P 21, 10 Asp MLC 88; cf *The Try Again* (1908) Shipping Gazette, 2 June.

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735. Action by give-way vessel.

Under the International Regulations for Preventing Collisions at Sea 1972¹, every vessel² which is directed to keep out of the way of another vessel³ must, so far as possible, take early and substantial action to keep well clear⁴.

This rule applies only to vessels in sight of one another⁵.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

3 See eg the Collision Regulations 1972 r 13 (overtaking vessel to keep out of way of other) (see PARA 732) and r 15 (vessel with other on starboard side when crossing to keep out of way) (see PARA 734).

4 Collision Regulations 1972 r 16. The rules in the Collision Regulations 1972 Pt B (Steering and Sailing Rules) Section II (Conduct of vessels in sight of one another) (rr 11-18) (see also PARAS 731-734, 736-737) must be strictly complied with; however, vessels are not prevented from taking sufficiently early action ahead of the point in time at which those rules come into effect: Merchant Shipping Notice 1781(M) Introduction para 6. As to action by a stand-on vessel see PARA 736.

5 Collision Regulations 1972 r 11. As to when vessels are deemed to be in sight of one another see PARA 731 note 9.

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736. Action by stand-on vessel.

Under the International Regulations for Preventing Collisions at Sea 1972¹, where one of two vessels² is to keep out of the way³, the other (the 'stand-on' vessel) must keep her course and speed⁴. The duty of the stand-on vessel to keep her course and speed does not come into force until it is the duty of the give-way vessel to keep out of the way and that duty does not arise until there is risk of collision⁵ within the meaning of the collision rules⁶, or a close proximity between vessels in an overtaking situation⁷.

The stand-on vessel may, however, take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with the Collision Regulations 1972⁸. When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she must take such action as will best aid⁹ to avoid collision¹⁰.

A power-driven vessel¹¹ which takes action¹² in a crossing situation¹³ to avoid collision with another power-driven vessel must not, if the circumstances of the case admit, alter course to port for a vessel on her own port side¹⁴.

This rule applies only to vessels in sight of one another¹⁵; and it does not relieve the give-way vessel of her obligation¹⁶ to keep out of the way¹⁷.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

3 See eg the Collision Regulations 1972 r 13 (overtaking vessel to keep out of way of other) (see PARA 732) and r 15 (vessel with other on starboard side when crossing to keep out of way) (see PARA 734).

4 Collision Regulations 1972 r 17(a)(i). For these purposes, 'course and speed' means course and speed in following the nautical manoeuvre in which, to the knowledge of the other vessel, the stand-on vessel is at the time engaged: *The Roanoke* [1908] P 231 at 239, 11 Asp MLC 253 at 257, CA, per Lord Alverstone CJ; and see eg *The Afrika* (1937) 57 Ll L Rep 215 at 220, 221, PC (vessel engaged in coming to anchor); *The Taunton* (1928) 31 Ll L Rep 119 at 120. Thus it means the course and speed which the vessel would take naturally and independently of the presence of the other vessel, as the proper method of her navigation at the particular time and place: *The Roanoke* at 247 and at 259 per Kennedy LJ; and see *The Karama* [1921] P 76, 15 Asp MLC 318, CA (affd sub nom *Haughland (Owners) v Karama (Owners)* [1922] 1 AC 68, 15 Asp MLC 430, HL) (two crossing ships making for the same buoy where both would make an eight point turn).

In ordinary circumstances, when no alteration of course or speed is required by the manoeuvre which the vessel is carrying out, the first duty of the stand-on vessel under the Collision Regulations 1972 r 17 is not to make any alteration in either, but to keep her course and speed as long as this will enable the other vessel to keep out of the way: cf *The Ranza* (1898) 79 LJP 21n; *The Huntsman* (1911) 11 Asp MLC 606.

The rules in the Collision Regulations 1972 Pt B (Steering and Sailing Rules) Section II (Conduct of vessels in sight of one another) (rr 11-18) (see also PARAS 731-735, 737) must be strictly complied with; however, vessels

are not prevented from taking sufficiently early action ahead of the point in time at which those rules come into effect: Merchant Shipping Notice 1781(M) Introduction para 6.

5 As to the risk of collision see PARA 726.

6 *The Bellanoch* [1907] P 170 at 180, CA; *The Roanoke* [1908] P 231 at 241, 245, 11 Asp MLC 253 at 257, 258, CA. See also *The Norma* (1876) 3 Asp MLC 272, PC (schooner altered course when steamer two miles off; manoeuvre innocent); cf *The Sylph* (1857) Sw 233; *Great Ship Co v Sharples, The Great Eastern* (1864) 3 Moo PCCNS 31; *The Manchester Regiment* [1938] P 117 at 129, 130, 60 Ll L Rep 279; *The Statue of Liberty* [1971] 2 Lloyd's Rep 277, HL. A vessel which would normally be the give-way vessel and which is not under command and has hoisted the appropriate shapes (see PARA 746) is not thereby converted into a stand-on vessel for the purposes of the Collision Regulations 1972 r 17, but the other ship has a duty arising from the duty of good seamanship to keep out of her way: *Mendip Range (Owners) v Radcliffe* [1921] 1 AC 556, 15 Asp MLC 242, HL. See also *Orduna (Owners) v Shipping Controller* [1921] 1 AC 250, HL; *The Fancy* [1917] P 13, 13 Asp MLC 603 (patrol steamer when intercepting a steamship not relieved of her obligations under the crossing rule, but other vessel also to blame for altering course and speed).

7 See *The Nowy Sacz* [1979] QB 236, [1978] 2 All ER 297, [1977] 2 Lloyd's Rep 91, CA; and PARA 732.

8 Collision Regulations 1972 r 17(a)(ii).

9 The liability of the stand-on vessel is to be judged on the supposition that she is only aiding action by the other vessel and she is not to be held to blame because of the other vessel's inaction: see *The Sparto* [1956] 1 Lloyd's Rep 400 at 407. The action which as a rule will best aid to avert collision is to go full speed astern: *Peter Pan v Mendocino* (1921) 6 Ll L Rep 519 at 521, 522; *Kitano Maru (Owners) v Otranto (Owners), The Otranto* [1931] AC 194, 18 Asp MLC 193, HL.

10 Collision Regulations 1972 r 17(b). Prior to the Collision Regulations 1972 which gave the vessel discretionary power to take action to avoid collision (see r 17(a)(ii); and the text and note 8) it was a matter of some difficulty for the officer in charge of a stand-on vessel to determine when the time had arrived for him to take action, although latitude was allowed to him: see *SS Albano v Allan Line SS Co Ltd, Union Dampfschiffsrhederei AG v SS Parisian* [1907] AC 193 at 207, 10 Asp MLC 365 at 370, PC; *The Huntsman* (1911) 11 Asp MLC 606 at 608; and see also *Compagnie des Forges et d'Hormecourt v Gibson & Co, The Eidsvaag v The Gala* 1920 SC 247 (action to avert collision justified); *The Treherbert* [1934] P 31, 18 Asp MLC 458, CA; *The Sparto* [1956] 1 Lloyd's Rep 400 at 407. It is quite impossible to determine mathematically the point at which the stand-on vessel must act; the rules have to be construed so that persons may act reasonably upon them: *The Ranza* (1898) 79 LJP 21n; and see *Kitano Maru (Owners) v Otranto (Owners), The Otranto* [1931] AC 194, 18 Asp MLC 193, HL. If the officer in charge is found to have been watching the other vessel and doing his best to make up his mind when to act, he ought not to be held to blame for waiting a moment too long before acting or acting too soon: *The Ranza* (1898) 79 LJP 21n at 22; *The Huntsman* (1911) 11 Asp MLC 606; *The Sparto* [1956] 1 Lloyd's Rep 400 at 407. See also *Owners of the Mineral Dampier v Owners of the Hanjin Madras* [2001] EWCA Civ 1278, [2001] 2 All ER (Comm) 805, [2001] 2 Lloyd's Rep 419; and *Owners of the Selat Arjuna v Owners of the Contship Success* [2000] 1 All ER (Comm) 905, CA (in both cases, stand-on vessel not liable for failing to take correct avoiding action); and *Owners of the Sitarem v Owners and/or demise charterers of the Spirit* [2001] 2 All ER (Comm) 837, [2001] 2 Lloyd's Rep 107 (vessel not complying with her obligation to take early action to keep out of the way nonetheless was manifestly a much smaller vessel able to manoeuvre more readily than the other vessel).

11 As to the meaning of 'power-driven vessel' see PARA 730 note 22.

12 Ie action in accordance with the Collision Regulations 1972 r 17(a)(ii) (see the text and note 8); see r 17(c).

13 As to the meaning of a 'crossing situation' see PARA 734.

14 Collision Regulations 1972 r 17(c).

15 Collision Regulations 1972 r 11. As to when vessels are deemed to be in sight of one another see PARA 731 note 9.

16 Ie under the Collision Regulations 1972 r 16 (see PARA 735); see r 17(d).

17 Collision Regulations 1972 r 17(d).

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737. Responsibilities between vessels.

Except where the rules of the International Regulations for Preventing Collisions at Sea 1972¹ relating to narrow channels², traffic separation schemes³ and overtaking⁴ otherwise require⁵:

938 (1) a power-driven vessel⁶ underway⁷ must keep out of the way⁸ of:

41

- 93. (a) a vessel not under command⁹;
- 94. (b) a vessel restricted in her ability to manoeuvre¹⁰;
- 95. (c) a vessel engaged in fishing¹¹;
- 96. (d) a sailing vessel¹²;

42

939 (2) a sailing vessel underway must keep out of the way of:

43

- 97. (a) a vessel not under command¹³;
- 98. (b) a vessel restricted in her ability to manoeuvre¹⁴;
- 99. (c) a vessel engaged in fishing¹⁵;

44

940 (3) a vessel engaged in fishing when underway must, so far as possible, keep out of the way of:

45

- 100. (a) a vessel not under command¹⁶;
- 101. (b) a vessel restricted in her ability to manoeuvre¹⁷.

46

Any vessel other than a vessel not under command or a vessel restricted in her ability to manoeuvre must, if the circumstances of the case admit, avoid impeding the safe passage of a vessel constrained by her draught¹⁸, exhibiting the appropriate¹⁹ signals²⁰. A vessel constrained by her draught must navigate with particular caution having full regard to her special condition²¹.

A seaplane²² on the water must, in general, keep well clear of all vessels and avoid impeding their navigation²³. In circumstances, however, where risk of collision²⁴ exists, she must comply with the steering and sailing rules²⁵.

A wing-in-ground (WIG) craft²⁶ must, when taking off, landing and in flight near the surface, keep well clear of all other vessels and avoid impeding their navigation²⁷; and such a craft operating on the water surface must comply with the steering and sailing rules²⁸ as a power-driven vessel²⁹.

This rule applies only to vessels in sight of one another³⁰.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972

referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 Ie the Collision Regulations 1972 r 9 (see PARA 728): see r 18.

3 Ie the Collision Regulations 1972 r 10 (see PARA 730): see r 18.

4 Ie the Collision Regulations 1972 r 13 (see PARA 732): see r 18.

5 Collision Regulations 1972 r 18. The rules in the Collision Regulations 1972 Pt B (Steering and Sailing Rules) Section II (Conduct of vessels in sight of one another) (rr 11-18) (see also PARAS 731-736) must be strictly complied with; however, vessels are not prevented from taking sufficiently early action ahead of the point in time at which those rules come into effect: Merchant Shipping Notice 1781(M) Introduction para 6.

6 As to the meaning of 'power-driven vessel' see PARA 730 note 22; and as to the meaning of 'vessel' see PARA 720 note 2.

7 As to the meaning of 'underway' see PARA 730 note 24.

8 As to the duty to keep out of the way see PARA 735.

9 Collision Regulations 1972 r 18(a)(i). For these purposes, 'vessel not under command' means a vessel which through some exceptional circumstance is unable to manoeuvre as required by the rules of the Collision Regulations 1972 and is, therefore, unable to keep out of the way of another vessel: r 3(f).

10 Collision Regulations 1972 r 18(a)(ii). As to the meaning of 'vessel restricted in her ability to manoeuvre' see PARA 730 note 24.

11 Collision Regulations 1972 r 18(a)(iii). As to the meaning of 'vessel engaged in fishing' see PARA 720 note 9.

12 Collision Regulations 1972 r 18(a)(iv). As to the meaning of 'sailing vessel' see PARA 728 note 7. A power-driven vessel may perform her duty of keeping out of the way of a sailing vessel by decreasing her speed or by altering her course so as to pass astern; but she should not alter her course to a sailing vessel approaching from a distance at night if she cannot see her lights owing to their improper position or otherwise and is in doubt as to the course the sailing vessel is pursuing and on which side she is going to pass; a prudent master of a power-driven vessel, if in doubt as to the course of the sailing vessel and if it is necessary to act, ought to wait by slackening speed or stopping until he can ascertain her course: *Beal v Marchais, The Bougainville and The James C Stevenson* (1873) LR 5 PC 316 at 323, 2 Asp MLC 1 at 3.

13 Collision Regulations 1972 r 18(b)(i).

14 Collision Regulations 1972 r 18(b)(ii).

15 Collision Regulations 1972 r 18(b)(iii).

16 Collision Regulations 1972 r 18(c)(i).

17 Collision Regulations 1972 r 18(c)(ii).

18 For these purposes, 'vessel constrained by her draught' means a power-driven vessel which, because of her draught in relation to the available depth and width of navigable water, is severely restricted in her ability to deviate from the course she is following: Collision Regulations 1972 r 3(h).

19 Ie the signals prescribed by the Collision Regulations 1972 r 28 (see PARA 747): see r 18(d)(i).

20 Collision Regulations 1972 r 18(d)(i).

21 Collision Regulations 1972 r 18(d)(ii).

22 As to the meaning of 'seaplane' see PARA 720 note 2.

23 Collision Regulations 1972 r 18(e).

24 As to the risk of collision see PARA 726.

25 Collision Regulations 1972 r 18(e). The text refers to the rules in Pt B (rr 4-19) (see also PARAS 724-736, 738): see r 18(e).

- 26 As to the meaning of 'wing-in-ground (WIG) craft' see PARA 720 note 2.
- 27 Collision Regulations 1972 r 18(f)(i).
- 28 Ie the rules in the Collision Regulations 1972 Pt B (rr 4-19) (see also PARAS 724-736, 738): see r 18(f)(ii).
- 29 Collision Regulations 1972 r 18(f)(ii).
- 30 Collision Regulations 1972 r 11. As to when vessels are deemed to be in sight of one another see PARA 731 note 9.

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C. CONDUCT OF VESSELS IN RESTRICTED VISIBILITY

738. Vessels proceeding in restricted visibility.

Special provisions of the International Regulations for Preventing Collisions at Sea 1972¹ apply to vessels² not in sight of one another³ when navigating in or near an area of restricted visibility⁴.

Every vessel must proceed at a safe speed⁵ adapted to the prevailing circumstances and conditions of restricted visibility⁶. A power-driven vessel⁷ must have her engines ready for immediate manoeuvre⁸.

Every vessel must have due regard to the prevailing circumstances and conditions of restricted visibility when complying with the rules relating to the conduct of vessels in any conditions of visibility⁹.

A vessel which detects, by radar¹⁰ alone, the presence of another vessel must determine if a close-quarters situation¹¹ is developing and/or risk of collision¹² exists¹³. If so, she must take avoiding action¹⁴ in ample time, provided that, when such action consists of an alteration of course, so far as possible the following must be avoided¹⁵:

- 941 (1) an alteration of course to port for a vessel forward of the beam, other than for a vessel being overtaken¹⁶;
- 942 (2) an alteration of course towards a vessel abeam or abaft the beam¹⁷.

Except where it has been determined that a risk of collision does not exist, every vessel which hears apparently forward of her beam the fog signal¹⁸ of another vessel, or which cannot avoid a close-quarters situation with another vessel forward of her beam, must reduce her speed to the minimum at which she can be kept on her course¹⁹. She must, if necessary, take all her way off and in any event navigate with extreme caution until danger of collision is over²⁰.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

3 As to when vessels are deemed to be in sight of one another see PARA 731 note 9; and as to the conduct of vessels in sight of one another see PARAS 731-737.

4 Collision Regulations 1972 r 19(a). For these purposes, 'restricted visibility' means any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms or any other similar causes: r 3(l).

The rules in the Collision Regulations 1972 Pt B (Steering and Sailing Rules) section III (Conduct of vessels in restricted visibility) (r 19) (see PARA 738) must be strictly complied with; however, vessels are not prevented from taking sufficiently early action ahead of the point in time at which those rules come into effect: Merchant Shipping Notice 1781(M) Introduction para 6.

- 5 As to what is a safe speed see PARA 725.
- 6 Collision Regulations 1972 r 19(b).
- 7 As to the meaning of 'power-driven vessel' see PARA 730 note 22.
- 8 Collision Regulations 1972 r 19(b).
- 9 Collision Regulations 1972 r 19(c). The text refers to the rules of Pt B Section I (rr 4-10) (see PARAS 724-730): see r 19(c).
- 10 As to radar generally see PARA 723.
- 11 As to what constitutes a close-quarters situation see PARA 727 note 6.
- 12 As to the risk of collision see PARA 726.
- 13 Collision Regulations 1972 r 19(d).
- 14 As to action to avoid collision see PARA 727.
- 15 Collision Regulations 1972 r 19(d).
- 16 Collision Regulations 1972 r 19(d)(i). As to conduct of vessels during overtaking see PARA 732.
- 17 Collision Regulations 1972 r 19(d)(ii).
- 18 As to sound signals in restricted visibility see PARA 753.
- 19 Collision Regulations 1972 r 19(e).
- 20 Collision Regulations 1972 r 19(e).

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(iii) Lights and Shapes

739. Application of rules concerning lights and shapes.

The rules of the International Regulations for Preventing Collisions at Sea 1972¹ concerning lights and shapes² must be complied with in all weathers³.

The rules concerning lights⁴ must be complied with from sunset to sunrise and during such times no other lights may be exhibited, except such lights as cannot be mistaken for the lights specified in the rules⁵ or do not impair their visibility or distinctive character, or interfere with the keeping of a proper look-out⁶. The lights so prescribed⁷ must, if carried, also be exhibited from sunrise to sunset in restricted visibility⁸ and may be exhibited in all other circumstances when it is deemed necessary⁹.

The rules concerning shapes must be complied with by day¹⁰.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 I.e. the Collision Regulations 1972 Pt C (rr 20-31) (see also PARA 740 et seq): see r 20(a). The lights and shapes specified in Pt C must comply with the provisions of Annex I (Positioning and technical details of lights and shapes): r 20(e).

3 Collision Regulations 1972 r 20(a).

4 As to the visibility of lights see PARA 740.

5 I.e. the lights specified in the Collision Regulations 1972: see r 20(b).

6 Collision Regulations 1972 r 20(b). As to the keeping of a look-out see PARA 724. The rules as to lights are in general not satisfied by equivalents, or by anything less than a close and literal adherence to what they prescribe: *The Emperor and The Lady of the Lake* (1865) Holt Adm 37 at 38, PC. In special circumstances, a vessel may be excused for showing unusual lights: *The Buckhurst* (1881) 6 PD 152, 4 Asp MLC 484; *The Merchant Prince* (1885) 10 PD 139, 5 Asp MLC 520; *The Faedrelandet* [1895] P 205, 8 Asp MLC 1, CA. For an unsuccessful effort to justify a wrong light by custom see *The Talbot* [1891] P 184, 7 Asp MLC 36. A vessel which has lost or damaged her lights owing to bad weather, collision or otherwise is bound to replace them as soon as she reasonably can: *The Aurora*, *The Robert Ingham* (1861) Lush 327; *The Saxonia*, *The Eclipse* (1862) Lush 410, PC; *The Kjobenhavn* (1874) 2 Asp MLC 213, PC. It is no excuse for the absence of lights that they were unnecessary owing to bright moonlight (*The City of London*, *Morgan v Sim* (1857) Sw 245, PC) or that they were being trimmed (*The Victoria* (1848) 3 Wm Rob 49; *The CM Palmer*, *The Larnax* (1873) 2 Asp MLC 94, PC) or went out by accident (*The Rob Roy* (1849) 3 Wm Rob 190; *The Sylph* (1854) 2 Ecc & Ad 75; *The Hibernia* (1874) 2 Asp MLC 454, PC).

7 I.e. prescribed by the Collision Regulations 1972: see r 20(c).

8 As to the meaning of 'restricted visibility' see PARA 738 note 4.

9 Collision Regulations 1972 r 20(c).

10 Collision Regulations 1972 r 20(d).

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740. Visibility of lights.

The lights prescribed in the rules of the International Regulations for Preventing Collisions at Sea 1972 relating to lights and shapes¹ must be of a specified intensity² so as to be visible at various prescribed minimum ranges³, as follows:

- 943 (1) in vessels of 50 metres or more in length⁴, the prescribed minimum ranges are: for a masthead light⁵, six miles; for a sidelight⁶, three miles; for a sternlight⁷, three miles; for a towing light⁸, three miles; for a white, red, green or yellow all-round⁹ light, three miles¹⁰;
- 944 (2) in vessels of 12 metres or more in length but less than 50 metres in length, the prescribed minimum ranges are: for a masthead light, five miles (except that, where the length of the vessel is less than 20 metres, it is three miles); for a sidelight, two miles; for a sternlight, two miles; for a towing light, two miles; for a white, red, green or yellow all-round light, two miles¹¹;
- 945 (3) in vessels of less than 12 metres in length, the prescribed minimum ranges are: for a masthead light, two miles; for a sidelight, one mile; for a sternlight, two miles; for a towing light, two miles; for a white, red, green or yellow all-round light, two miles¹²;
- 946 (4) in inconspicuous, partly submerged vessels or objects being towed, the prescribed range is, for a white all-round light, three miles¹³.

1 The prescribed in the Collision Regulations 1972 Pt C (rr 20-31) (see also PARAS 739, 741 et seq): see r 22. As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 The lights prescribed in the Collision Regulations 1972 Pt C (see also PARAS 739, 741 et seq) must have an intensity as specified in Annex I Section 8: see r 22. As to the application of Annex I see PARA 739 note 2.

3 Collision Regulations 1972 r 22. As to the application of these provisions see PARA 739. As to exemptions from the Collision Regulations 1972 regarding the installation and positioning of lights in favour of any vessel or class of vessels, the keel of which was laid or which was at a corresponding stage of construction before the date of entry into force of the Regulations, provided that she complies with the requirements of the International Regulations for Preventing Collisions at Sea 1960 (revoked), see the Collision Regulations 1972 r 38(a)-(f), (h). As to the meaning of 'date of entry into force of the Regulations' in r 38 (exemptions) see PARA 718 note 3. As to the meaning of 'vessel' see PARA 720 note 2.

4 As to the meaning of 'length' see PARA 728 note 6.

5 For these purposes, 'masthead light' means a white light placed over the fore and aft centreline of the vessel showing an unbroken light over an arc of the horizon of 225 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on either side of the vessel: Collision Regulations 1972 r 21(a).

6 For these purposes, 'sidelights' means a green light on the starboard side and a red light on the port side each showing an unbroken light over an arc of the horizon of 112.5 degrees and so fixed as to show the light from the right ahead to 22.5 degrees abaft the beam on its respective side; but in a vessel of less than 20 metres in length the sidelights may be combined in one lantern carried on the fore and aft centreline of the vessel: Collision Regulations 1972 r 21(b).

7 For these purposes, 'sternlight' means a white light placed as nearly as practicable at the stern showing an unbroken light over an arc of the horizon of 135 degrees and so fixed as to show the light 67.5 degrees from right aft on each side of the vessel: Collision Regulations 1972 r 21(c).

8 For these purposes, 'towing light' means a yellow light having the same characteristics as the sternlight as defined in the Collision Regulations 1972 r 21(c) (see note 7): r 21(d).

9 For these purposes, 'all-round light' means a light showing an unbroken light over an arc of the horizon of 360 degrees: Collision Regulations 1972 r 21(e).

10 Collision Regulations 1972 r 22(a).

11 Collision Regulations 1972 r 22(b).

12 Collision Regulations 1972 r 22(c).

13 Collision Regulations 1972 r 22(d).

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741. Lights required by power-driven vessels underway.

Under the rules of the International Regulations for Preventing Collisions at Sea 1972 relating to lights and shapes¹, a power-driven vessel² underway³ must exhibit⁴:

- 947 (1) a masthead light⁵ forward⁶;
- 948 (2) a second masthead light abaft of and higher than the forward one, except that a vessel of less than 50 metres in length⁷ is not obliged to exhibit such light but may do so⁸;
- 949 (3) sidelights⁹;
- 950 (4) a sternlight¹⁰.

An air-cushion vessel when operating in the non-displacement mode must, in addition to the lights prescribed in heads (1)-(4) above, exhibit an all-round¹¹ flashing¹² yellow light¹³; and a wing-in-ground (WIG) craft¹⁴ only when taking off, landing and in flight near the surface must, in addition to the lights prescribed in heads (1)-(4) above, exhibit a high intensity all-round flashing red light¹⁵.

A power-driven vessel of less than 12 metres in length may, in lieu of the lights prescribed in heads (1) to (4) above, exhibit an all-round white light and sidelights¹⁶.

A power-driven vessel of less than seven metres in length whose maximum speed does not exceed seven knots may, in lieu of the lights prescribed in heads (1) to (4) above, exhibit an all-round white light and must, if practicable, also exhibit sidelights¹⁷.

The masthead light or all-round white light on a power-driven vessel of less than 12 metres in length may be displaced from the fore and aft centreline of the vessel if centreline fitting is not practicable, provided that the sidelights are combined in one lantern which must be carried on the fore and aft centreline of the vessel or located as nearly as practicable in the same fore and aft line as the masthead light or the all-round white light¹⁸.

1 I.e. the International Regulations for Preventing Collisions at Sea 1972 Pt C (rr 20-31) (see also PARAS 739-740, 742 et seq). As to the application of these provisions see PARA 739. As to the positioning and technical details of lights and shapes see Annex I; and PARA 739 note 2; and as to the required visibility of the prescribed lights see PARA 740.

As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'power-driven vessel' see PARA 730 note 22; and as to the meaning of 'vessel' see PARA 720 note 2.

3 As to the meaning of 'underway' see PARA 730 note 24.

4 Collision Regulations 1972 r 23(a).

5 As to the meaning of 'masthead light' see PARA 740 note 5.

6 Collision Regulations 1972 r 23(a)(i).

- 7 As to the meaning of 'length' see PARA 728 note 6.
- 8 Collision Regulations 1972 r 23(a)(ii).
- 9 Collision Regulations 1972 r 23(a)(iii). As to the meaning of 'sidelights' see PARA 740 note 6.
- 10 Collision Regulations 1972 r 23(a)(iv). As to the meaning of 'sternlight' see PARA 740 note 7.
- 11 As to the meaning of 'all-round light' see PARA 740 note 9.
- 12 For these purposes, 'flashing light' means a light flashing at regular intervals at a frequency of 120 flashes or more per minute: Collision Regulations 1972 r 21(f).
- 13 Collision Regulations 1972 r 23(b).
- 14 As to the meaning of 'wing-in-ground (WIG) craft' see PARA 720 note 2.
- 15 Collision Regulations 1972 r 23(c).
- 16 Collision Regulations 1972 r 23(d)(i).
- 17 Collision Regulations 1972 r 23(d)(ii).
- 18 Collision Regulations 1972 r 23(d)(iii).

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742. Lights and shapes required by vessels towing and pushing.

Under the rules of the International Regulations for Preventing Collisions at Sea 1972 relating to lights and shapes¹, a power-driven vessel², when towing³, must exhibit⁴:

- 951 (1) two masthead lights⁵ forward in a vertical line, or, when the length of the tow, measuring from the stern of the towing vessel to the after end of the tow, exceeds 200 metres, three such lights in a vertical line⁶;
- 952 (2) sidelights⁷;
- 953 (3) a sternlight⁸;
- 954 (4) a towing light⁹ in a vertical line above the sternlight¹⁰;
- 955 (5) when the length of the tow exceeds 200 metres, a diamond shape where it can best be seen¹¹.

When a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit, they are to be regarded as a power-driven vessel and exhibit the appropriate lights¹².

A power-driven vessel, when pushing ahead or towing alongside, except in the case of a composite unit, must exhibit¹³:

- 956 (a) two masthead lights forward in a vertical line¹⁴;
- 957 (b) sidelights¹⁵;
- 958 (c) a sternlight¹⁶.

Where, from any sufficient cause, it is impracticable for a vessel not normally engaged in towing operations to display the lights prescribed in heads (1) to (5) above¹⁷ or in heads (a) to (c) above¹⁸, such vessel is not required to exhibit those lights when engaged in towing another vessel in distress or otherwise in need of assistance¹⁹. All possible measures must be taken to indicate the nature of the relationship between the towing vessel and the vessel being towed²⁰, in particular by illuminating the towline²¹.

1 The International Regulations for Preventing Collisions at Sea 1972 Pt C (rr 20-31) (see also PARAS 739-741, 743 et seq). As to the application of these provisions see PARA 739. As to the positioning and technical details of lights and shapes see Annex I; and PARA 739 note 2; and as to the required visibility of the prescribed lights see PARA 740.

As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'power-driven vessel' see PARA 730 note 22; and as to the meaning of 'vessel' see PARA 720 note 2.

3 The purpose of the lights required to be carried by vessels, when towing, is to warn other vessels that the vessel towing is incumbered and not in all respects in control of her movements: *Union Steamship Co v Aracan (Owners), The American and The Syria* (1874) LR 6 PC 127 at 131, 2 Asp MLC 350 at 360. A tug towing a vessel up to her anchor should exhibit the towing lights: *The Romance* [1901] P 15, 9 Asp MLC 149.

- 4 Collision Regulations 1972 r 24(a). A power-driven vessel to which r 24(a) applies must also comply with r 23(a)(ii) (see PARA 741): see r 24(d).
- 5 As to the meaning of 'masthead light' see PARA 740 note 5.
- 6 Collision Regulations 1972 r 24(a)(i). Head (1) in the text applies instead of r 23(a)(i), (ii) (see PARA 741): see r 24(a)(i).
- 7 Collision Regulations 1972 r 24(a)(ii). As to the meaning of 'sidelights' see PARA 740 note 6.
- 8 Collision Regulations 1972 r 24(a)(iii). As to the meaning of 'sternlight' see PARA 740 note 7.
- 9 As to the meaning of 'towing light' see PARA 740 note 8.
- 10 Collision Regulations 1972 r 24(a)(iv).
- 11 Collision Regulations 1972 r 24(a)(v).
- 12 Collision Regulations 1972 r 24(b). The text refers to the appropriate lights that are prescribed by r 23 (see PARA 741): see r 24(b).
- 13 Collision Regulations 1972 r 24(c). A power-driven vessel to which r 24(c) applies must also comply with r 23(a)(ii) (see PARA 741): see r 24(d).
- 14 Collision Regulations 1972 r 24(c)(i). Head (a) in the text applies to a power-driven vessel instead of r 23(a)(i), (ii) (see PARA 741): see r 24(c)(i).
- 15 Collision Regulations 1972 r 24(c)(ii).
- 16 Collision Regulations 1972 r 24(c)(iii).
- 17 Ie the lights prescribed in the Collision Regulations 1972 r 24(a) (see the text and notes 1-11): see r 24(i).
- 18 Ie the lights prescribed in the Collision Regulations 1972 r 24(c) (see the text and notes 13-16): see r 24(i).
- 19 Collision Regulations 1972 r 24(i).
- 20 Ie as authorised by the Collision Regulations 1972 r 36 (see PARA 754): see r 24(i).
- 21 Collision Regulations 1972 r 24(i).

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743. Lights and shapes required by vessels being towed or pushed.

Under the rules of the International Regulations for Preventing Collisions at Sea 1972 relating to lights and shapes¹, a vessel² or object being towed³ must exhibit⁴:

- 959 (1) sidelights⁵;
- 960 (2) a sternlight⁶;
- 961 (3) when the length of the tow exceeds 200 metres, a diamond shape where it can best be seen⁷.

Any number of vessels being towed alongside or pushed in a group must be lighted as one vessel⁸; however:

- 962 (a) a vessel being pushed ahead, not being part of a composite unit, must exhibit, at the forward end, sidelights⁹;
- 963 (b) a vessel being towed alongside must exhibit a sternlight and, at the forward end, sidelights¹⁰.

An inconspicuous, partly submerged vessel or object, or combination of such vessels or objects being towed, must exhibit¹¹:

- 964 (i) if it is less than 25 metres in breadth¹², one all-round white light¹³ at or near the forward end and one at or near the after end, except that dracones need not exhibit a light at or near the forward end¹⁴;
- 965 (ii) if it is 25 metres or more in breadth, two additional all-round white lights at or near the extremities of its breadth¹⁵;
- 966 (iii) if it exceeds 100 metres in length¹⁶, additional all-round white lights between the lights prescribed in heads (i) and (ii) above so that the distance between the lights does not exceed 100 metres¹⁷;
- 967 (iv) a diamond shape at or near the aftermost extremity of the last vessel or object being towed and, if the length of the tow exceeds 200 metres, an additional diamond shape where it can best be seen and located as far forward as is practicable¹⁸.

Where from any sufficient cause it is impracticable for a vessel or object being towed to exhibit the lights or shapes prescribed in heads (1) to (3) above¹⁹ or in heads (i) to (iv) above²⁰, all possible measures must be taken to light the vessel or object towed or at least to indicate the presence of such vessel or object²¹.

¹ I.e. the International Regulations for Preventing Collisions at Sea 1972 Pt C (rr 20-31) (see also PARAS 739-742, 744 et seq). As to the application of these provisions see PARA 739. As to the positioning and technical details of lights and shapes see Annex I; and PARA 739 note 2; and as to the required visibility of the prescribed lights see PARA 740.

As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' see PARA 720 note 2.

3 Ie other than a vessel or object being towed as mentioned in the Collision Regulations 1972 r 24(g) (see the text and notes 11-18): see r 24(e).

A dumb barge lashed alongside a tug underway is probably a vessel being towed: see *The Lighter (No 3)* (1902) 18 TLR 322, PC (where it seems to have been assumed that the dumb barge was being towed). In view of the special provision now made as to lights for vessels being pushed (see PARA 742), the question might perhaps arise whether a vessel lashed alongside another was being towed or pushed. A vessel being drawn up to her anchor by a tug is not being towed: *The Romance* [1901] P 15, 9 Asp MLC 149. The tug must carry towing lights: see PARA 742. A tug which merely has a rope fast to a vessel with the intention of towing her at a future time is not towing: *The Sargasso* [1912] P 192, 12 Asp MLC 202.

4 Collision Regulations 1972 r 24(e).

5 Collision Regulations 1972 r 24(e)(i). As to the meaning of 'sidelights' see PARA 740 note 6.

6 Collision Regulations 1972 r 24(e)(ii). As to the meaning of 'sternlight' see PARA 740 note 7.

7 Collision Regulations 1972 r 24(e)(iii).

8 Collision Regulations 1972 r 24(f).

9 Collision Regulations 1972 r 24(f)(i).

10 Collision Regulations 1972 r 24(f)(ii).

11 Collision Regulations 1972 r 24(g).

12 For these purposes, 'breadth' of a vessel means her greatest breadth: Collision Regulations 1972 r 3(j).

13 As to the meaning of 'all-round light' see PARA 740 note 9.

14 Collision Regulations 1972 r 24(g)(i).

15 Collision Regulations 1972 r 24(g)(ii).

16 As to the meaning of 'length' see PARA 728 note 6.

17 Collision Regulations 1972 r 24(g)(iii).

18 Collision Regulations 1972 r 24(g)(iv).

19 Ie the lights or shapes prescribed in the Collision Regulations 1972 r 24(e) (see the text and notes 1-7): see r 24(h).

20 Ie the lights or shapes prescribed in the Collision Regulations 1972 r 24(g) (see the text and notes 11-18): see r 24(h).

21 Collision Regulations 1972 r 24(h).

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744. Lights and shapes required by sailing vessels underway and vessels under oars.

Under the rules of the International Regulations for Preventing Collisions at Sea 1972 relating to lights and shapes¹, a sailing vessel² underway³ must exhibit⁴:

- 968 (1) sidelights⁵;
- 969 (2) a sternlight⁶.

In a sailing vessel of less than 20 metres in length⁷, the lights prescribed by heads (1) and (2) above may be combined in one lantern carried at or near the top of the mast where it can best be seen⁸.

A sailing vessel underway may, in addition to the lights prescribed by heads (1) and (2) above, exhibit at or near the top of the mast, where they can best be seen, two all-round lights⁹ in a vertical line, the upper being red and the lower green, but these lights must not be exhibited in conjunction with the combined lantern¹⁰.

A sailing vessel of less than seven metres in length must, if practicable, also exhibit the prescribed lights¹¹ but, if she does not, she must have ready at hand an electric torch or lighted lantern showing a white light which must be exhibited in sufficient time to prevent collision¹².

A vessel under oars may exhibit the prescribed lights for sailing vessels¹³ but, if she does not, she must have ready at hand an electric torch or lighted lantern showing a white light which must be exhibited in sufficient time to prevent collision¹⁴.

A vessel proceeding under sail, when also being propelled by machinery, must exhibit forward where it can best be seen a conical shape, apex downwards¹⁵.

1 The International Regulations for Preventing Collisions at Sea 1972 Pt C (rr 20-31) (see also PARAS 739-743, 745 et seq). As to the application of these provisions see PARA 739. As to the positioning and technical details of lights and shapes see Annex I; and PARA 739 note 2; and as to the required visibility of the prescribed lights see PARA 740.

As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'sailing vessel' see PARA 728 note 7.

3 As to the meaning of 'underway' see PARA 730 note 24.

4 Collision Regulations 1972 r 25(a).

5 Collision Regulations 1972 r 25(a)(i). As to the meaning of 'sidelights' see PARA 740 note 6.

6 Collision Regulations 1972 r 25(a)(ii). As to the meaning of 'sternlight' see PARA 740 note 7.

7 As to the meaning of 'length' see PARA 728 note 6.

8 Collision Regulations 1972 r 25(b).

9 As to the meaning of 'all-round light' see PARA 740 note 9.

10 Collision Regulations 1972 r 25(c). The 'combined lantern' referred to is that permitted by r 25(b) (see the text and notes 7-8): see r 25(c).

11 Ie the lights prescribed in the Collision Regulations 1972 r 25(a) or (b) (see the text and notes 1-8): see r 25(d)(i).

12 Collision Regulations 1972 r 25(d)(i). As to the risk of collision see PARA 726; and as to action taken to avoid collision see PARA 727.

13 Ie the lights prescribed in the Collision Regulations 1972 r 25: see r 25(d)(ii).

14 Collision Regulations 1972 r 25(d)(ii).

15 Collision Regulations 1972 r 25(e).

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745. Lights and shapes required by fishing vessels.

Under the rules of the International Regulations for Preventing Collisions at Sea 1972 relating to lights and shapes¹, a vessel engaged in fishing², whether underway³ or at anchor, must exhibit only the lights and shapes prescribed as follows:⁴

- 970 (1) a vessel, when engaged in trawling⁵, must exhibit⁶:
47
102. (a) two all-round lights⁷ in a vertical line, the upper being green and the lower white, or a shape consisting of two cones with their apexes together in a vertical line one above the other⁸;
103. (b) a masthead light⁹ abaft of and higher than the all-round green light, although a vessel of less than 50 metres in length is not obliged to exhibit such a light but may do so¹⁰;
104. (c) when making way through the water, in addition to the lights prescribed in heads (a) and (b) above, sidelights¹¹ and a sternlight¹²;
- 48
- 971 (2) a vessel engaged in fishing, other than trawling, must exhibit¹³:
49
105. (a) two all-round lights in a vertical line, the upper being red and the lower white, or a shape consisting of two cones with apexes together in a vertical line one above the other¹⁴;
106. (b) when there is outlying gear extending more than 150 metres horizontally from the vessel, an all-round white light or a cone apex upwards in the direction of the gear¹⁵;
107. (c) when making way through the water, in addition to the lights prescribed in heads (a) and (b) above, sidelights and a sternlight¹⁶;
- 50
- 972 and
- 973 (3) the additional signals which are prescribed¹⁷ must be exhibited by a vessel engaged in fishing in close proximity to other vessels engaged in fishing¹⁸.

A vessel, when not engaged in fishing, must not exhibit the lights or shapes so prescribed¹⁹, but only those prescribed for a vessel of her length²⁰.

1. I.e. the International Regulations for Preventing Collisions at Sea 1972 Pt C (rr 20-31) (see also PARAS 739-744, 746 et seq). As to the application of these provisions see PARA 739. As to the positioning and technical details of lights and shapes see Annex I; and PARA 739 note 2; and as to the required visibility of the prescribed lights see PARA 740.

As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2. As to the meaning of 'vessel engaged in fishing' see PARA 720 note 9.

3. As to the meaning of 'underway' see PARA 730 note 24.

4 Collision Regulations 1972 r 26(a).

5 For these purposes, 'trawling' means the dragging through the water of a dredge net or other apparatus used as a fishing appliance: see the Collision Regulations 1972 r 26(b). 'Engaged in trawling' is not the same as trawling, but seems to cover the work of fishing with a trawl from the first shooting until in any case the trawl is got aboard again: *The Cockatrice* [1908] P 182 at 188, 11 Asp MLC 50 at 52. 'Engaged in trawling' even covers the interval after the trawl has been got aboard and before the vessel shoots again if she is going to shoot immediately on the same ground (*The Cockatrice* at 188 and at 52), or if she is hove-to, with the work of trawling not yet completed (*The Picton* [1910] P 46, 11 Asp MLC 358); but, if the vessel decides to go off to another spot to trawl, then, as soon as she is under command and in a position to go full steam ahead, she ought to shift her lights and put up the underway lights (*The Upton Castle* [1906] P 147, 10 Asp MLC 153; *The Cockatrice* at 188 and at 52; *The Skrim* (1914) 30 TLR 555).

6 Collision Regulations 1972 r 26(b).

7 As to the meaning of 'all-round light' see PARA 740 note 9.

8 Collision Regulations 1972 r 26(b)(i).

9 As to the meaning of 'masthead light' see PARA 740 note 5.

10 Collision Regulations 1972 r 26(b)(ii).

11 As to the meaning of 'sidelights' see PARA 740 note 6.

12 Collision Regulations 1972 r 26(b)(iii). As to the meaning of 'sternlight' see PARA 740 note 7.

13 Collision Regulations 1972 r 26(c).

14 Collision Regulations 1972 r 26(c)(i).

15 Collision Regulations 1972 r 26(c)(ii).

16 Collision Regulations 1972 r 26(c)(iii).

17 Ie the additional signals prescribed in the Collision Regulations 1972 Annex II (Additional signals for fishing vessels fishing in close proximity): see r 26(d).

18 Collision Regulations 1972 r 26(d).

19 Ie prescribed in the Collision Regulations 1972 r 26 (see heads (1) to (3) in the text): see r 26(e).

20 Collision Regulations 1972 r 26(e). As to the meaning of 'length' see PARA 728 note 6.

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746. Lights and shapes required by vessels not under command or restricted in their ability to manoeuvre.

Under the rules of the International Regulations for Preventing Collisions at Sea 1972 relating to lights and shapes¹, a vessel not under command² must exhibit³:

- 974 (1) two all-round red lights⁴ in a vertical line where they can best be seen⁵;
- 975 (2) two balls or similar shapes in a vertical line where they can best be seen⁶;
- 976 (3) when making way through the water, in addition to the lights prescribed in heads (1) and (2) above, sidelights⁷ and a sternlight⁸.

A vessel restricted in her ability to manoeuvre⁹, except a vessel engaged in mine-clearance operations, must exhibit¹⁰:

- 977 (a) three all-round lights in a vertical line where they can best be seen, the highest and lowest of these lights being red and the middle light white¹¹;
- 978 (b) three shapes in a vertical line where they can best be seen, the highest and lowest of these shapes being balls and the middle one a diamond¹²;
- 979 (c) when making way through the water, a masthead light¹³ or lights, sidelights and a sternlight, in addition to the lights prescribed in head (a) above¹⁴;
- 980 (d) when at anchor, in addition to the lights or shapes prescribed in heads (a) and (b) above, the appropriate light, lights or shapes¹⁵ for vessel at anchor¹⁶.

A power-driven vessel¹⁷ engaged in a towing operation such as severely restricts the towing vessel and her tow in their ability to deviate from their course must, in addition to the lights or shapes otherwise prescribed in relation to towing¹⁸, exhibit the lights or shapes prescribed in heads (a) and (b) above¹⁹.

A vessel engaged in dredging or underwater operations, when restricted in her ability to manoeuvre, must exhibit the lights and shapes prescribed in heads (a) to (c) above and must in addition, when an obstruction exists, exhibit²⁰:

- 981 (i) two all-round red lights or two balls in a vertical line to indicate the side on which the obstruction exists²¹;
- 982 (ii) two all-round green lights or two diamonds in a vertical line to indicate the side on which another vessel may pass²²;
- 983 (iii) when at anchor, the lights or shapes prescribed in heads (i) and (ii) above instead of the lights or shape normally exhibited²³ by vessels at anchor²⁴.

Whenever the size of a vessel engaged in diving operations makes it impracticable to exhibit the shapes prescribed in heads (i) to (iii) above, the following must be exhibited²⁵:

- 984 (A) three all-round lights in a vertical line where they can best be seen, the highest and lowest of these lights being red and the middle light white²⁶;

- 985 (B) a rigid replica of the International Code flag 'A' not less than one metre in height; and measures must be taken to ensure its all-round visibility²⁷.

A vessel engaged in mine-clearance operations must, in addition to the lights prescribed for a power-driven vessel²⁸ or to the lights or shape prescribed for a vessel at anchor²⁹, as appropriate, exhibit three all-round green lights or three balls, one of these lights or shapes being exhibited at or near the foremast head and one at each end of the fore yard³⁰. These lights or shapes indicate that it is dangerous for another vessel to approach within 1,000 metres of the mine-clearance vessel³¹.

Vessels of less than 12 metres in length³², except those engaged in diving operations, are not required to exhibit the lights and shapes so prescribed³³.

The signals so prescribed³⁴ are not signals of vessels in distress and requiring assistance³⁵, for which other provision is made³⁶.

1 le the International Regulations for Preventing Collisions at Sea 1972 Pt C (rr 20-31) (see also PARAS 739-745, 747 et seq). As to the application of these provisions see PARA 739. As to the positioning and technical details of lights and shapes see Annex I; and PARA 739 note 2; and as to the required visibility of the prescribed lights see PARA 740.

As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel not under command' see PARA 737 note 9; and as to the meaning of 'vessel' see PARA 720 note 2.

Whether a vessel is not under command is a question of fact which depends upon the actual condition of the vessel and not upon the belief of the person in charge of her: *Mendip Range (Owners) v Radcliffe* [1921] 1 AC 556, 15 Asp MLC 242, HL. The fact that tugs are attached to a vessel in tow is not necessarily enough to prevent the tow being out of command: *Thomas Stone Shipping Ltd v The Admiralty, The Albion* [1953] P 117, [1953] 1 All ER 978, CA.

3 Collision Regulations 1972 r 27(a).

4 As to the meaning of 'all-round light' see PARA 740 note 9.

5 Collision Regulations 1972 r 27(a)(i).

6 Collision Regulations 1972 r 27(a)(ii).

7 As to the meaning of 'sidelights' see PARA 740 note 6.

8 Collision Regulations 1972 r 27(a)(iii). As to the meaning of 'sternlight' see PARA 740 note 7.

9 As to the meaning of 'vessel restricted in her ability to manoeuvre' see PARA 730 note 24. As to the lights to be exhibited by a vessel engaged in a towing operation which renders her unable to deviate from her course see the Collision Regulations 1972 r 27(c) (see the text and notes 17-19); and see PARA 742.

10 Collision Regulations 1972 r 27(b).

11 Collision Regulations 1972 r 27(b)(i).

12 Collision Regulations 1972 r 27(b)(ii).

13 As to the meaning of 'masthead light' see PARA 740 note 5.

14 Collision Regulations 1972 r 27(b)(iii).

15 le the light, lights or shape prescribed by the Collision Regulations 1972 r 30 (see PARA 749): see r 27(b)(iv).

- 16 Collision Regulations 1972 r 27(b)(iv).
- 17 As to the meaning of 'power-driven vessel' see PARA 730 note 22.
- 18 Ie prescribed by the Collision Regulations 1972 r 24(a) (see PARA 742): see r 27(c).
- 19 Collision Regulations 1972 r 27(c).
- 20 Collision Regulations 1972 r 27(d).
- 21 Collision Regulations 1972 r 27(d)(i).
- 22 Collision Regulations 1972 r 27(d)(ii).
- 23 Ie the lights or shape as prescribed by the Collision Regulations 1972 r 30 (see PARA 749): see r 27(d)(iii).
- 24 Collision Regulations 1972 r 27(d)(iii).
- 25 Collision Regulations 1972 r 27(e).
- 26 Collision Regulations 1972 r 27(e)(i).
- 27 Collision Regulations 1972 r 27(e)(ii).
- 28 Ie in the Collision Regulations 1972 r 23 (see PARA 741): see r 27(f).
- 29 Ie in the Collision Regulations 1972 r 30 (see PARA 749): see r 27(f).
- 30 Collision Regulations 1972 r 27(f).
- 31 Collision Regulations 1972 r 27(f).
- 32 As to the meaning of 'length' see PARA 728 note 6.
- 33 Collision Regulations 1972 r 27(g). The text refers to the lights and shapes prescribed in r 27: see r 27(g).
- 34 Ie in the Collision Regulations 1972 r 27: see r 27(h).
- 35 Collision Regulations 1972 r 27(h).
- 36 Signals of vessels in distress and requiring assistance are contained in the Collision Regulations 1972 Annex IV (Distress Signals) (see PARA 755): see r 27(h).

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747. Lights required by vessels constrained by their draught.

Under the rules of the International Regulations for Preventing Collisions at Sea 1972 relating to lights and shapes¹, a vessel constrained by her draught² may, in addition to the lights prescribed for power-driven vessels³, exhibit where they can best be seen three all-round red lights⁴ in a vertical line, or a cylinder⁵.

1 Ie the International Regulations for Preventing Collisions at Sea 1972 Pt C (rr 20-31) (see also PARAS 739-746, 748 et seq). As to the application of these provisions see PARA 739. As to the positioning and technical details of lights and shapes see Annex I; and PARA 739 note 2; and as to the required visibility of the prescribed lights see PARA 740.

As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel constrained by her draught' see PARA 737 note 18; and as to the meaning of 'vessel' see PARA 720 note 2.

3 Ie the lights prescribed by the Collision Regulations 1972 r 23 (see PARA 741): see r 28. As to the meaning of 'power-driven vessel' see PARA 730 note 22.

4 As to the meaning of 'all-round light' see PARA 740 note 9.

5 Collision Regulations 1972 r 28.

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748. Lights and shapes required by pilot vessels.

Under the rules of the International Regulations for Preventing Collisions at Sea 1972 relating to lights and shapes¹, a vessel² engaged on pilotage duty³ must exhibit⁴:

- 986 (1) at or near the masthead, two all-round lights⁵ in a vertical line, the upper being white and the lower red⁶;
- 987 (2) when underway⁷, in addition, sidelights⁸ and a sternlight⁹;
- 988 (3) when at anchor, in addition to the lights prescribed in head (1) above, the light, lights or shape prescribed¹⁰ for vessels at anchor¹¹.

A pilot vessel, when not engaged on pilotage duty, must exhibit the lights or shapes prescribed for a similar vessel of her length¹².

1 I.e. the International Regulations for Preventing Collisions at Sea 1972 Pt C (rr 20-31) (see also PARAS 739-747, 749, 750). As to the application of these provisions see PARA 739. As to the positioning and technical details of lights and shapes see Annex I; and PARA 739 note 2; and as to the required visibility of the prescribed lights see PARA 740.

As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' see PARA 720 note 2.

3 As to pilotage generally see PARA 562 et seq.

4 Collision Regulations 1972 r 29(a).

5 As to the meaning of 'all-round light' see PARA 740 note 9.

6 Collision Regulations 1972 r 29(a)(i).

7 As to the meaning of 'underway' see PARA 730 note 24.

8 As to the meaning of 'sidelights' see PARA 740 note 6.

9 Collision Regulations 1972 r 29(a)(ii). As to the meaning of 'sternlight' see PARA 740 note 7.

10 I.e. in the Collision Regulations 1972 r 30 (see PARA 749): see r 29(a)(iii).

11 Collision Regulations 1972 r 29(a)(iii).

12 Collision Regulations 1972 r 29(b). As to the meaning of 'length' see PARA 728 note 6.

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749. Lights and shapes required by anchored vessels and vessels aground.

Under the rules of the International Regulations for Preventing Collisions at Sea 1972 relating to lights and shapes¹, a vessel² at anchor³ must exhibit where it can best be seen⁴:

- 989 (1) in the fore part, an all-round white light⁵ or one ball⁶;
- 990 (2) at or near the stern and at a lower level than the light prescribed in head (1) above, an all-round white light⁷.

A vessel of less than 50 metres in length⁸ may exhibit an all-round white light where it can best be seen instead of the lights prescribed in heads (1) and (2) above⁹.

A vessel at anchor may, and a vessel of 100 metres and more in length must, also use the available working or equivalent lights to illuminate her decks¹⁰.

A vessel aground¹¹ must exhibit the usual lights prescribed¹² and in addition, where they can best be seen¹³:

- 991 (a) two all-round red lights in a vertical line¹⁴;
- 992 (b) three balls in a vertical line¹⁵.

A vessel of less than seven metres in length, when at anchor, not in or near a narrow channel¹⁶, fairway¹⁷ or anchorage (or where other vessels normally navigate) is not required to exhibit the usual prescribed¹⁸ lights or shape¹⁹.

A vessel of less than 12 metres in length, when aground, is not required to exhibit the lights or shapes prescribed in heads (a) and (b) above²⁰.

1 The International Regulations for Preventing Collisions at Sea 1972 Pt C (rr 20-31) (see also PARAS 739-748, 750). As to the application of these provisions see PARA 739. As to the positioning and technical details of lights and shapes see Annex I; and PARA 739 note 2; and as to the required visibility of the prescribed lights see PARA 740.

As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' see PARA 720 note 2.

3 A vessel is at anchor when either: (1) she is held by her own anchor or some equivalent eg a heavy stone; or (2) she is fast to moorings which are secured by an anchor or some equivalent: *The Dunelm* (1884) 9 PD 164 at 171, 5 Asp MLC 304 at 308, CA. When a vessel has her anchor down, she is at anchor only if she is held by and under the control of her anchor: *The Esk* (1869) LR 2 A & E 350 at 353. For cases in which vessels were held to have been at anchor see *The Wega* [1895] P 156, 7 Asp MLC 597 (vessel failed to take in sidelights immediately she was brought up by anchor); *The Romance* [1901] P 15, 9 Asp MLC 149 (vessel still at anchor, although being moved by tug up to anchor, before being towed away); *The Palembang* [1929] P 246, 18 Asp MLC 45 (vessel at anchor although using engines to avoid another vessel). For cases in which vessels were held not to have been at anchor see *The Esk* (vessel pulling up anchor and no longer held by it); *The Indian Chief* (1888) 14 PD 24, 6 Asp MLC 362 (barge dredging down river with anchor down to check her way; cf *The Smyrna*

(1860) cited in *The George Arkle* (1861) Lush 382 at 385, PC); *The Faedrelandet* [1895] P 205, 8 Asp MLC 1, CA (vessel riding gale with anchor chains out and anchors unshackled); *The Yvonne and The Effra* (1932) 43 Ll L Rep 252 (vessel turning with anchor down but not held by it); cf *The Buckhurst* (1881) 6 PD 152, 4 Asp MLC 484 (vessel carrying anchor light after parting from anchors; collision inevitable, whatever lights carried). A vessel moored to a wharf is not at anchor: *The City of Seattle* (1903) 9 Canadian Exchequer Reports 146; *The Turquoise* [1908] P 148, 11 Asp MLC 28 (vessel lying outside another vessel at wharf).

4 Collision Regulations 1972 r 30(a).

5 As to the meaning of 'all-round light' see PARA 740 note 9.

6 Collision Regulations 1972 r 30(a)(i).

7 Collision Regulations 1972 r 30(a)(ii).

8 As to the meaning of 'length' see PARA 728 note 6.

9 Collision Regulations 1972 r 30(b).

10 Collision Regulations 1972 r 30(c).

11 A vessel dragging through mud was judged not to be aground in *The Bellanoch* [1907] P 170 at 174, CA (on appeal on another point [1907] AC 269, HL).

12 Ie the lights prescribed by the Collision Regulations 1972 r 30(a) or (b) (see the text and notes 1-9): see r 30(d).

13 Collision Regulations 1972 r 30(d).

14 Collision Regulations 1972 r 30(d)(i).

15 Collision Regulations 1972 r 30(d)(ii).

16 As to the meaning of 'narrow channel' see PARA 729.

17 As to the meaning of 'fairway' see PARA 728 note 4.

18 Ie the lights or shape prescribed by the Collision Regulations 1972 r 30(a) or (b) (see the text and notes 1-9): see r 30(e).

19 Collision Regulations 1972 r 30(e).

20 Collision Regulations 1972 r 30(f).

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750. Lights and shapes required by seaplanes or wing-in-ground craft.

Where it is impracticable for a seaplane¹ or a wing-in-ground (WIG) craft² to exhibit lights and shapes of the characteristics or in the positions prescribed in the rules of the International Regulations for Preventing Collisions at Sea 1972 relating to lights and shapes³, it must exhibit lights and shapes as closely similar in characteristics and position as is possible⁴.

1 As to the meaning of 'seaplane' see PARA 720 note 2.

2 As to the meaning of 'wing-in-ground (WIG) craft' see PARA 720 note 2.

3 I.e. the International Regulations for Preventing Collisions at Sea 1972 Pt C (rr 20-31) (see also PARAS 739-749): see r 31. As to the application of these provisions see PARA 739. As to the positioning and technical details of lights and shapes see Annex I; and PARA 739 note 2; and as to the required visibility of the prescribed lights see PARA 740.

As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

4 Collision Regulations 1972 r 31.

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(iv) Sound and Light Signals

751. Equipment for sound signals.

Under the rules of the International Regulations for Preventing Collisions at Sea 1972¹, a vessel² of 12 metres or more in length³ must be provided with a whistle⁴, a vessel of 20 metres or more in length must be provided with a bell in addition to a whistle, and a vessel of 100 metres or more in length must, in addition, be provided with a gong, the tone and sound of which cannot be confused with that of the bell⁵.

A vessel of less than 12 metres in length is not obliged to carry the sound signalling appliances so prescribed⁶ but, if she does not, she must be provided with some other means of making an efficient sound signal⁷.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

As to exemptions from the Collision Regulations 1972 regarding the requirements for sound signal appliances in favour of any vessel or class of vessels, the keel of which was laid or which was at a corresponding stage of construction before the date of entry into force of the Regulations, provided that she complies with the requirements of the International Regulations for Preventing Collisions at Sea 1960 (revoked), see the Collision Regulations 1972 r 38(g). As to the meaning of 'date of entry into force of the Regulations' in r 38 (exemptions) see PARA 718 note 3.

2 As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

3 As to the meaning of 'length' see PARA 728 note 6.

4 For these purposes, 'whistle' means any sound signalling appliance capable of producing the prescribed blasts and which complies with the specifications of the Collision Regulations 1972 Annex III (Technical details of sound signal appliances): r 32(a). See also note 5.

5 Collision Regulations 1972 r 33(a). The whistle, bell and gong referred to in the text must comply with the specifications in Annex III (Technical details of sound signal appliances): see r 33(a). The bell or gong or both may be replaced by other equipment having the same respective sound characteristics, provided that manual sounding of the required signals is always possible: see r 33(a).

6 Ie prescribed in the Collision Regulations 1972 r 33(a): see r 33(b).

7 Collision Regulations 1972 r 33(b).

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752. Manoeuvring and warning signals.

Under the rules of the International Regulations for Preventing Collisions at Sea 1972¹, when vessels² are in sight of one another³, a power-driven vessel⁴ underway⁵, when manoeuvring as authorised or required by the rules of the Collision Regulations 1972⁶, must indicate that manoeuvre by the following signals on her whistle⁷: one short blast⁸ to mean 'I am altering my course to starboard'; two short blasts to mean 'I am altering my course to port'; three short blasts to mean 'I am operating astern propulsion'⁹.

Any vessel may supplement the whistle signals so prescribed¹⁰ by light signals, repeated as appropriate, whilst the manoeuvre is being carried out¹¹. The light signals have the following significance¹²: one flash¹³ to mean 'I am altering my course to starboard'; two flashes to mean 'I am altering my course to port'; three flashes to mean 'I am operating astern propulsion'¹⁴.

When in sight of one another in a narrow channel¹⁵ or fairway¹⁶, a vessel intending to overtake another must¹⁷ indicate her intention by the following signals on her whistle¹⁸: two prolonged blasts¹⁹ followed by one short blast to mean 'I intend to overtake you on your starboard side'; two prolonged blasts followed by two short blasts to mean 'I intend to overtake you on your port side'²⁰.

The vessel about to be overtaken must²¹ indicate her agreement by the following signal on her whistle, that is to say one prolonged, one short, one prolonged and one short blast, in that order²².

When vessels in sight of one another are approaching each other and from any cause either vessel fails to understand the intentions or actions of the other, or is in doubt whether sufficient action is being taken by the other to avoid collision²³, the vessel in doubt must immediately indicate such doubt by giving at least five short and rapid blasts on the whistle²⁴. Such signal may be supplemented by a light signal of at least five short and rapid flashes²⁵.

A vessel nearing a bend or an area of a channel or fairway where other vessels may be obscured by an intervening obstruction must sound one prolonged blast²⁶. Such signal must be answered with a prolonged blast by any approaching vessel that may be within hearing around the bend or behind the intervening obstruction²⁷.

If whistles are fitted on a vessel at a distance apart of more than 100 metres, one whistle only must be used for giving manoeuvring and warning signals²⁸.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

3 As to when vessels are deemed to be in sight of one another see PARA 731 note 9.

4 As to the meaning of 'power-driven vessel' see PARA 730 note 22.

5 As to the meaning of 'underway' see PARA 730 note 24.

- 6 le by the rules of the Collision Regulations 1972 (see PARA 720 et seq): see r 34(a).
- 7 Collision Regulations 1972 r 34(a). As to the meaning of 'whistle' see PARA 751 note 4.
- 8 For these purposes, 'short blast' means a blast of about one second's duration: Collision Regulations 1972 r 32(b).
- 9 Collision Regulations 1972 r 34(a).
- 10 le prescribed by the Collision Regulations 1972 r 34(a) (see the text and notes 1-9): see r 34(b).
- 11 Collision Regulations 1972 r 34(b). The light used for this signal must, if fitted, be an all-round white light, visible at a minimum range of five miles, and must comply with the provisions of Annex I (Positioning and technical details of lights and shapes): r 34(b)(iii). As to the meaning of 'all-round light' see PARA 740 note 9.
- 12 Collision Regulations 1972 r 34(b)(i).
- 13 The duration of each flash must be about one second; the interval between flashes must be about one second; and the interval between successive signals must be not less than ten seconds: Collision Regulations 1972 r 34(b)(ii).
- 14 Collision Regulations 1972 r 34(b)(i).
- 15 As to the meaning of 'narrow channel' see PARA 729.
- 16 As to the meaning of 'fairway' see PARA 728 note 4.
- 17 le in compliance with the Collision Regulations 1972 r 9(e)(i) (see PARA 728): see r 34(c)(i).
- 18 Collision Regulations 1972 r 34(c)(i).
- 19 For these purposes, 'prolonged blast' means a blast of from four to six seconds' duration: Collision Regulations 1972 r 32(c).
- 20 Collision Regulations 1972 r 34(c)(i).
- 21 le when acting in compliance with the Collision Regulations 1972 r 9(e)(i) (see PARA 728): see r 34(c)(ii).
- 22 Collision Regulations 1972 r 34(c)(ii).
- 23 As to action to avoid collision see PARA 727.
- 24 Collision Regulations 1972 r 34(d).
- 25 Collision Regulations 1972 r 34(d).
- 26 Collision Regulations 1972 r 34(e). See also PARA 728.
- 27 Collision Regulations 1972 r 34(e).
- 28 Collision Regulations 1972 r 34(f).

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753. Sound signals in restricted visibility.

Under the rules of the International Regulations for Preventing Collisions at Sea 1972¹, the following signals must be used in or near an area of restricted visibility², whether by day or night, as prescribed³:

- 993 (1) a power-driven vessel⁴ making way through the water must sound at intervals of not more than two minutes one prolonged blast⁵;
- 994 (2) a power-driven vessel underway⁶ but stopped and making no way through the water must sound at intervals of not more than two minutes two prolonged blasts in succession with an interval of about two seconds between them⁷;
- 995 (3) a vessel not under command⁸, a vessel restricted in her ability to manoeuvre⁹, a vessel constrained by her draught¹⁰, a sailing vessel¹¹, a vessel engaged in fishing¹² and a vessel engaged in towing¹³ or pushing another vessel must, instead of the signals prescribed in head (1) or (2) above, sound at intervals of not more than two minutes three blasts in succession, that is one prolonged followed by two short blasts¹⁴;
- 996 (4) a vessel engaged in fishing, when at anchor¹⁵, and a vessel restricted in her ability to manoeuvre when carrying out her work at anchor, must, instead of the signals prescribed in head (7) below sound the signal prescribed in head (3) above¹⁶;
- 997 (5) a vessel towed¹⁷ or, if more than one vessel is towed, the last vessel of the tow, if manned, must at intervals of not more than two minutes sound four blasts in succession, namely one prolonged followed by three short blasts; and when practicable, this signal must be made immediately after the signal made by the towing vessel¹⁸;
- 998 (6) when a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit, they are regarded as a power-driven vessel and must give the signals prescribed in head (1) or (2) above¹⁹;
- 999 (7) a vessel at anchor must at intervals of not more than one minute ring the bell²⁰ rapidly for about five seconds; in a vessel of 100 metres or more in length²¹ the bell must be sounded in the forepart of the vessel and, immediately after the ringing of the bell, the gong²² must be sounded rapidly for about five seconds in the after part of the vessel²³;
- 1000 (8) a vessel aground²⁴ must give the bell signal and, if required, the gong signal prescribed in head (7) above and must, in addition, give three separate and distinct strokes on the bell immediately before and after the rapid ringing of the bell²⁵;
- 1001 (9) a vessel of 12 metres or more but less than 20 metres in length is not obliged to give the bell signals prescribed in heads (7) and (8) above, but, if she does not, she must make some other efficient sound signal at intervals of not more than two minutes²⁶;
- 1002 (10) a vessel of less than 12 metres in length is not obliged to give the above-mentioned signals but, if she does not, must make some other efficient sound signal at intervals of not more than two minutes²⁷;
- 1003 (11) a pilot vessel, when engaged on pilotage duty, may, in addition to the signals prescribed in head (1), (2) or (7) above, sound an identity signal consisting of four short blasts²⁸.

- 1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.
- 2 As to the meaning of 'restricted visibility' see PARA 738 note 4.
- 3 See the Collision Regulations 1972 r 35.
- 4 As to the meaning of 'power-driven vessel' see PARA 730 note 22. As to the meaning of 'vessel' see PARA 720 note 2.
- 5 Collision Regulations 1972 r 35(a). As to the meaning of 'prolonged blast' see PARA 752 note 19.
- 6 As to the meaning of 'underway' see PARA 730 note 24.
- 7 Collision Regulations 1972 r 35(b).
- 8 As to the meaning of 'vessel not under command' see PARA 737 note 9.
- 9 As to the meaning of 'vessel restricted in her ability to manoeuvre' see PARA 730 note 24.
- 10 As to the meaning of 'vessel constrained by her draught' see PARA 737 note 18.
- 11 As to the meaning of 'sailing vessel' see PARA 728 note 7.
- 12 As to the meaning of 'vessel engaged in fishing' see PARA 720 note 9.
- 13 As to towing see PARA 742.
- 14 Collision Regulations 1972 r 35(c). As to the meaning of 'short blast' see PARA 752 note 8.
- 15 As to the meaning of 'vessel at anchor' see PARA 749 note 3.
- 16 Collision Regulations 1972 r 35(d).
- 17 As to the meaning of 'vessel being towed' see PARA 743 note 3.
- 18 Collision Regulations 1972 r 35(e).
- 19 Collision Regulations 1972 r 35(f).
- 20 As to the bell see PARA 751.
- 21 As to the meaning of 'length' see PARA 728 note 6.
- 22 As to the gong see PARA 751.
- 23 Collision Regulations 1972 r 35(g). A vessel at anchor may, in addition, sound three blasts in succession, namely one short, one prolonged and one short blast, to give warning of her position and of the possibility of collision to an approaching vessel: see r 35(g).
- 24 As to vessels aground see PARA 749 note 11.
- 25 Collision Regulations 1972 r 35(h). A vessel aground may in addition sound an appropriate whistle signal: see r 35(h).
- 26 Collision Regulations 1972 r 35(i).
- 27 Collision Regulations 1972 r 35(j).
- 28 Collision Regulations 1972 r 35(k). As to pilotage generally see PARA 562 et seq.

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754. Signals to attract attention.

Under the rules of the International Regulations for Preventing Collisions at Sea 1972¹, if necessary to attract the attention of another vessel², any vessel may make light³ or sound⁴ signals that cannot be mistaken for any signal authorised elsewhere in the rules of the Collision Regulations 1972⁵, or may direct the beam of her searchlight in the direction of the danger, in such a way as not to embarrass any vessel⁶. Any light to attract the attention of another vessel must be such that it cannot be mistaken for any aid to navigation; and, for these purposes, the use of high intensity intermittent or revolving lights, such as strobe lights, must be avoided⁷.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

3 As to the lights and shapes required to be carried on vessels see PARA 739 et seq.

4 As to sound and light signals see PARA 751 et seq.

5 As to which see PARA 720 et seq.

6 Collision Regulations 1972 r 36.

7 Collision Regulations 1972 r 36.

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755. Distress signals.

Under the rules of the International Regulations for Preventing Collisions at Sea 1972¹, when a vessel² is in distress and requires assistance, she must use or exhibit the signals prescribed as follows³, the signals, to be so used or exhibited either together or separately, in order to indicate distress and need of assistance⁴:

- 1004 (1) a gun or other explosive signal fired at intervals of about a minute⁵;
- 1005 (2) a continuous sounding with any fog-signalling apparatus⁶;
- 1006 (3) rockets or shells, throwing red stars fired one at a time at short intervals⁷;
- 1007 (4) a signal made by radiotelegraphy or by any other signalling method consisting of the group ... -- -- -- ... (SOS) in the Morse Code⁸;
- 1008 (5) a signal sent by radiotelephony consisting of the spoken word 'Mayday'⁹;
- 1009 (6) the International Code Signal of distress indicated by NC¹⁰;
- 1010 (7) a signal consisting of a square flag having above or below it a ball or anything resembling a ball¹¹;
- 1011 (8) flames on the vessel, as from a burning tar barrel, oil barrel etc¹²;
- 1012 (9) a rocket parachute flare or a hand flare showing a red light¹³;
- 1013 (10) a smoke signal giving off orange-coloured smoke¹⁴;
- 1014 (11) slowly and repeatedly raising and lowering arms outstretched to each side¹⁵;
- 1015 (12) the radiotelegraph alarm signal¹⁶;
- 1016 (13) the radiotelephone alarm signal¹⁷;
- 1017 (14) signals transmitted by emergency position-indicating radio beacons ('EPIRBs')¹⁸;
- 1018 (15) approved signals transmitted by radiocommunication systems, including survival craft radar transponders¹⁹.

The use or exhibition of any of the signals set out in heads (1) to (15) above, except for the purpose of indicating distress and need of assistance, and the use of other signals which may be confused with any of the above signals, is prohibited²⁰.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'vessel' for these purposes see PARA 720 note 2.

3 See the Collision Regulations 1972 r 37. The text refers to the signals described in Annex IV (Distress Signals) (see heads (1) to (15) in the text): see r 37.

For these purposes, attention is drawn to the relevant sections of the International Code of Signals, the Merchant Ship Search and Rescue Manual and the following signals: (1) a piece of orange-coloured canvas with either a black square and circle or other appropriate symbol (for identification from the air) (Annex IV para 3(a)); (2) a dye marker (Annex IV para 3(b)). The reference to the International Code of Signals is a reference to the International Code of Signals (1985) published by the International Maritime Organisation: Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 1(7); Merchant Shipping Notice 1781(M) Introduction para 7(3). The reference to the Merchant Ship Search and Rescue Manual is a reference to the manual of that name published in 1986 by the International Maritime Organisation:

Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 1(7). Such references include references to any document amending either of those publications which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice: Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 1(7). As to the International Maritime Organisation (the 'IMO') see PARA 13; and as to the Secretary of State see PARA 38. As to the meaning of 'Merchant Shipping Notice' see PARA 715 note 9.

- 4 Collision Regulations 1972 Annex IV para 1.
- 5 Collision Regulations 1972 Annex IV para 1(a).
- 6 Collision Regulations 1972 Annex IV para 1(b).
- 7 Collision Regulations 1972 Annex IV para 1(c).
- 8 Collision Regulations 1972 Annex IV para 1(d).
- 9 Collision Regulations 1972 Annex IV para 1(e).
- 10 Collision Regulations 1972 Annex IV para 1(f).
- 11 Collision Regulations 1972 Annex IV para 1(g).
- 12 Collision Regulations 1972 Annex IV para 1(h).
- 13 Collision Regulations 1972 Annex IV para 1(i).
- 14 Collision Regulations 1972 Annex IV para 1(j).
- 15 Collision Regulations 1972 Annex IV para 1(k).
- 16 Collision Regulations 1972 Annex IV para 1(l).
- 17 Collision Regulations 1972 Annex IV para 1(m).
- 18 Collision Regulations 1972 Annex IV para 1(n).

The Merchant Shipping (EPIRB Registration) Regulations 2000, SI 2000/1850, provide that EPIRBs carried on United Kingdom ships and hovercraft must be registered with the competent authority in a member state of the International Telecommunication Union; and that, in the United Kingdom, the competent authority is HM Coastguard: see the Merchant Shipping (EPIRB Registration) Regulations 2000, SI 2000/1850.

- 19 Collision Regulations 1972 Annex IV para 1(o).
- 20 Collision Regulations 1972 Annex IV para 2.

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(3) DUTIES AFTER COLLISION

756. Duty of ship to assist the other in case of collision.

In every case of collision between two ships¹, it is the duty of the master² of each ship, if and so far as he can do so without danger³ to his own ship, crew and passengers, if any⁴:

1019 (1) to render⁵ to the other ship, its master, crew and passengers, if any, such assistance as may be practicable⁶, and may be necessary to save them from any danger caused by the collision, and to stay by the other ship until he has ascertained that it has no need of further assistance⁷; and

1020 (2) to give to the master of the other ship the name of his own ship and also the names of the ports⁸ from which it comes and to which it is bound⁹.

The failure of the master of a ship to comply with this duty¹⁰ does not raise any presumption of law that the collision was caused by his wrongful act, neglect or default¹¹. However, if the master fails without reasonable excuse to comply with the duty¹², he commits an offence¹³; and, if he is a certified officer, an inquiry into his conduct may be held¹⁴ and his certificate cancelled or suspended¹⁵.

Compliance with the statutory duty of rendering assistance after a collision does not prevent the assistance so given ranking as voluntary services for salvage purposes¹⁶.

1 As to the meaning of 'ship' see PARA 229.

The Secretary of State may make safety regulations with respect to the steps to be taken to prevent any collision involving a ship and in consequence of any collision involving a ship: see the Merchant Shipping Act 1995 s 85(3)(k); and PARA 591. As to the meaning of 'safety regulations' see PARA 591. As to the Secretary of State see PARA 38.

2 The duties imposed on the master of a ship by the Merchant Shipping Act 1995 s 92(1) apply to the masters of United Kingdom ships and to the masters of foreign ships when in United Kingdom waters: s 92(2). As to the meaning of 'master' see PARA 424. As to the meaning of 'foreign', in relation to a ship, see PARA 19 note 2; as to the meaning of 'United Kingdom ship' see PARA 230; and as to the meaning of 'United Kingdom waters' see PARA 48 note 10.

3 It seems that a reasonable apprehension that delay may result in capture by an enemy may excuse a vessel from staying to render assistance when that assistance may be rendered by the approaching enemy: *The Thuringia* (1872) 1 Asp MLC 283 at 292. Where, after a collision for which one vessel was solely to blame, the other vessel rendered assistance to her, although assistance could not be rendered without danger, and there was, therefore, no statutory duty to assist, and the vessel rendering assistance suffered damage in doing so, her owners were held not entitled to recover in a collision action from the owners of the ship assisted in respect of the damage suffered by their ship while rendering assistance, since that damage was not the direct result of the negligence which caused the collision, although the position might have been different if there had been a statutory duty to assist: *The San Onofre* [1922] P 243, 16 Asp MLC 1, CA. As to damages in collision actions see PARA 822 et seq.

4 Merchant Shipping Act 1995 s 92(1).

5 The duty to render arises only if there is danger from the collision. In the case of probable danger to life, the duty is to stay by until the extent of the danger can be ascertained: *The Queen of the Orwell* (1863) 7 LT 839.

6 This may consist of sending a ship's boat when more direct assistance would be impossible or dangerous: see *The Adriatic* (1875) 3 Asp MLC 16. Even when no other assistance can be given, it seems that at least the distress signals of the other vessel must be acknowledged: *The Emmy Haase* (1884) 9 PD 81, 5 Asp MLC 216.

7 Merchant Shipping Act 1995 s 92(1)(a).

As to the duty to assist ships and hovercraft in distress see the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874), with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277) (see PARA 8), especially Ch V, which is given effect by the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473 (as to which see PARA 641). As to the duty to assist aircraft in distress see PARA 448.

8 As to the meaning of 'port' see PARA 46 note 12.

9 Merchant Shipping Act 1995 s 92(1)(b).

10 Ie a failure to comply with the provisions of the Merchant Shipping Act 1995 s 92: see s 92(3).

11 Merchant Shipping Act 1995 s 92(3).

12 Ie if the master fails without reasonable excuse to comply with the Merchant Shipping Act 1995 s 92: see s 92(4); and PARA 1197.

13 See the Merchant Shipping Act 1995 s 92(4); and PARA 1197.

14 As to inquiries into the conduct of an officer see PARA 511 et seq.

15 See the Merchant Shipping Act 1995 s 92(4); and PARA 1197.

16 See PARA 933. A vessel cannot, however, claim for salvage services if she was to blame for the collision: see *The Harvest Home* [1904] P 409, 10 Asp MLC 19 (where a tug which was to blame was held entitled to claim remuneration for towing the damaged vessel). See also PARA 931.

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757. Required entry in log following accident, collision etc.

Where there is loss of life or major injury to any person on board, or any person is lost from, a ship or a ship's boat, or where a ship is lost or presumed to be lost (or is abandoned or materially damaged) or where a ship strands or is in collision, or where a ship is disabled or where any material damage is caused by a ship, a description of the casualty and the place where (or the position of the ship when) it occurred must be entered in the official log¹. The entry must be signed by the master and witnessed by a member of the crew².

1 See the Merchant Shipping (Official Log Books) Regulations 1981, SI 1981/569, regs 3, 4, Schedule Pt I para 12 (Schedule Pt I para 12 column 1 substituted by SI 1991/2145). As to the official log book see PARAS 531-533.

2 See the Merchant Shipping (Official Log Books) Regulations 1981 Schedule Pt I para 12 columns 2, 3.

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(4) RULES OF GOOD SEAMANSHIP

(i) Scope of Rules

758. Matters to which the rules relate.

The rules of good seamanship extend over the whole range of conditions in the working of a vessel from the time of launching and getting underway until she returns to her anchorage in port or moorings in a dock¹. There are special rules of good seamanship for the manoeuvring of sailing ships and other vessels², and for cases of fog and heavy weather³, and for navigation in rivers and other inland waters⁴. The question of what is good seamanship is one of fact to be decided on a consideration of all the relevant circumstances⁵.

1 See PARA 760 et seq. Even though a vessel may have infringed a rule of good seamanship, it seems that a party alleging negligence against her must prove both breach of duty and damage: see PARA 723. As to negligence causing damage see PARA 785 et seq.

2 See PARA 771 et seq.

3 See PARA 761.

4 See PARA 776 et seq.

5 *SS Heranger (Owners) v SS Diamond (Owners)* [1939] AC 94 at 100, 62 Ll L Rep 204 at 209, HL.

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759. Relationship between the rules of good seamanship and the collision regulations.

In any case where one of the rules contained in the International Regulations for Preventing Collisions at Sea 1972¹ applies, and the obligation imposed by that rule differs from the obligation which, in the absence of such a rule, would be imposed by good seamanship, the rule must be observed². In general, however, the duty to observe good seamanship has been preserved by the Collision Regulations 1972³. Moreover, the rules of good seamanship normally⁴ embody the obligations to be observed by persons in charge of vessels in circumstances for which the Collision Regulations 1972 make no provision⁵, or in other cases where those Regulations do not apply.

1 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 A difference may exist between the obligation contained in the Collision Regulations 1972 r 8(e) (see PARA 727) to slacken speed and take all way off if necessary to avoid collision and the practice of good seamanship to keep way on the ship to make her more manageable.

3 See the Collision Regulations 1972 r 2(a); and PARA 722.

4 Cases to which the Collision Regulations 1972 do not apply may be governed by local rules: see PARA 720.

5 Cf *Thomas Stone Ltd v Admiralty, The Albion* [1953] P 117, [1953] 1 All ER 978, [1953] 1 Lloyd's Rep 239, CA.

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(ii) Particular Conditions

760. Launching of vessel.

When a vessel is to be launched, those in charge of her are bound to give customary¹ or reasonable² notice of the launching, to prevent damage to vessels in the neighbourhood. This notice should be given by hoisting flags, by having boats in attendance to warn passing vessels³, by giving written notices or otherwise. Those in charge are also bound to take customary⁴ or reasonable⁵ precautions to prevent damage to other vessels, by keeping a good look-out, by having a tug or tugs in attendance and otherwise. The burden of proving such notice and such precautions lies on those in charge, even when they are defendants⁶. There are also, however, obligations on those in charge of passing vessels to keep out of the way⁷. A vessel at anchor in the track of a launch is bound to get out of the way if she has warning and the offer of a tug to move her⁸. If she refuses, those in charge of the launch may be justified in risking the chance of damaging her to avoid serious risk to life and property which would result from postponement⁹.

1 *The Vianna* (1858) Sw 405 at 406 (the custom of the place is the main matter for attention).

2 *The Blenheim* (1846) 2 Wm Rob 421 (where it was held that what is reasonable notice depends on local considerations and other circumstances; notice of the day is not sufficient; the time should be stated more definitely).

3 *The Vianna* (1858) Sw 405 at 407; *The George Roper* (1883) 8 PD 119, 5 Asp MLC 134 (breach of duty for the tug not to warn approaching vessels).

4 Eg having the harbour master present: see *The United States* (1865) 12 LT 33, PC.

5 *The George Roper* (1883) 8 PD 119 at 120, 5 Asp MLC 134.

6 *The Glengarry* (1874) 2 PD 235n, 2 Asp MLC 230.

7 *The United States* (1865) 12 LT 33, PC (where the vessel being launched was to blame for not signalling, and the other vessel was to blame for being there negligently).

8 *The Cachapool* (1881) 7 PD 217, 4 Asp MLC 502. This is so even if her anchor is foul and she will incur expense by slipping it: see *Frances (Owners) v Highland Loch (Owners)*, *The Highland Loch* [1912] AC 312, 12 Asp MLC 106, HL.

9 *Frances (Owners) v Highland Loch (Owners)*, *The Highland Loch* [1912] AC 312, 12 Asp MLC 106, HL (where it was dangerous to postpone the launch because the shores and keel blocks had been removed and the vessel could at any time have taken charge and gone off on her own account).

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761. Special weather conditions.

It may be exceedingly imprudent to move a large vessel, without the use of her engines, by means of a tug in a river at night in anything like thick weather¹, and an owner may be held liable for a collision if his vessel gets underway unnecessarily in bad weather with other vessels about her². In a dense fog, it may be improper for her to be underway at all³.

Apart from the rules contained in the International Regulations for Preventing Collisions at Sea 1972⁴ as to conduct in fog or other conditions restricting visibility⁵, a vessel may be to blame for neglecting such precautions as good seamanship dictates to guard against dangers arising from special weather⁶. Thus a steamship with three hands on board which broke from her moorings in a gale has been held to blame for not having her anchor ready to let go, and for her master and more of her crew not being on board⁷. A steamship, properly moored but dashed into by another vessel in heavy weather and broken adrift, was also held to blame for collision with a third vessel, among other reasons, for having her chains improperly unbent from her anchors, so that no anchor could be let go⁸. The master of a vessel has been held at fault for not having a sufficient crew on board in heavy weather to protect her against the ordinary incidents of peril which a competent seaman would guard against⁹.

1 *The Borussia* (1856) Sw 94; cf *The Socrates* and *The Champion* [1923] P 162, CA.

2 *The Carrier Dove* (1863) Brown & Lush 113, PC.

3 See PARA 738.

4 As to the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

5 In the Collision Regulations 1972 r 19: see PARA 738. As to sound signals in restricted visibility see PARA 753.

6 As to standing close in bad weather see PARA 770.

7 *The Kepler* (1875) 2 PD 40 (where a steamship was moored in a place which required every precaution, and there was a byelaw requiring her not to be left without a responsible person on board). As to the duty to have the anchor ready see PARA 762.

8 *The Pladda* (1876) 2 PD 34.

9 *The Excelsior* (1868) LR 2 A & E 268 at 272 (where the master was unable to move to another pier as requested by the harbour master because he had insufficient crew).

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762. Carrying and dropping anchor.

A power-driven vessel ought to have both anchors ready to let go when navigating in port past other vessels, where the existence of an exceptional current is known to be possible¹. Such a vessel² or a sailing vessel³ may, however, be excused for not dropping her anchor in time to prevent a collision. In a river, a vessel should carry her anchor as far as possible so as not to expose other vessels to damage by it⁴. Whether she is underway or moored, her owners will be liable for damage done by the improper projection of the anchor at night⁵ although not in daytime, if the other vessel could with ordinary care have avoided it⁶.

1 *The City of Peking v Compagnie des Messageries Maritimes, The City of Peking* (1888) 14 App Cas 40, 6 Asp MLC 396, CA. Similarly, a vessel at anchor in a strong tideway may be found in fault if her second anchor is so placed that it cannot be let go at once, where by so letting go she might have avoided a collision: *The Jessie and The Zaanland* [1917] P 138, 14 Asp MLC 139.

2 *The CM Palmer, The Larnax* (1873) 2 Asp MLC 94, PC.

3 *The Elizabeth, The Adalia* (1870) 22 LT 74; cf *The Peerless* (1860) Lush 30 (affd sub nom *Prouse v European and American Steam Shipping Co, The Peerless* (1860) Lush 103); *Doward v Lindsay, The William Lindsay* (1873) LR 5 PC 338, 2 Asp MLC 118 (defence of inevitable accident).

4 *The Six Sisters* [1900] P 302. As to navigation in rivers generally see PARA 776 et seq.

5 *The Margaret* (1881) 6 PD 76, 4 Asp MLC 375, CA. The vessel may be only partly to blame if a man ought to have been on the other vessel who would have prevented the damage: *The Scotia* (1890) 6 Asp MLC 541; *The Dunstanborough* (1891) [1892] P 363n.

6 *The Monte Rosa* [1893] P 23, 7 Asp MLC 326 (collision with tug). See also *The Vectis* [1929] P 204, 17 Asp MLC 574. As to coming up to anchor see PARA 763.

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763. Coming to anchor and foul berth.

A vessel intending to come to anchor ought to make preparations¹, choosing her time² and easing her speed³, and ought to see carefully that all is clear around her⁴. If the vessel is anchoring in a river, she should round to against the strength of the tide⁵, and give any necessary warning before putting herself across the line of navigation⁶.

When one vessel anchors near another, there should be sufficient space left for swinging to the anchor, so that in ordinary circumstances the two vessels cannot come together. A berth such that sufficient space is not left is a foul berth⁷. It is improper to anchor directly ahead or directly astern of another vessel, in the direction of the tides or prevailing winds, unless at so great a distance as will allow time for either vessel to take measures to avoid collision in the event of either driving from her anchors⁸. When a vessel has given another a foul berth, she has no right to demand that the other should take extraordinary precautions⁹, and, when the difficulty calls for instant decision, the other may not be to blame for an error of judgment¹⁰.

¹ She should, if necessary, get tug assistance: see PARA 767. As to carrying and dropping anchor see PARA 762.

² Cf *Bibby v Boissevain, The Egyptian* (1863) 1 Moo PCCNS 373.

³ Cf *The Ceres* (1857) Sw 250 at 252. A sailing vessel should shorten sail in time before bringing up near other vessels: cf *The Neptune the Second* (1814) 1 Dods 467; *The Secret* (1872) 1 Asp MLC 318. As to rules governing speed generally see PARA 769.

⁴ *The Ceres* (1857) Sw 250; *The Annot Lyle* (1886) 11 PD 114, 6 Asp MLC 50, CA. On grounds where drift net fishing is going on, fishing boats are forbidden to anchor between sunset and sunrise: see the Sea Fisheries Act 1883 s 2, Sch 1 art XIV. As to the repeal of certain provisions of the 1883 Act see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1005.

⁵ *The Shannon* (1842) 1 Wm Rob 463 at 471.

⁶ *The Queen Victoria* (1891) 7 Asp MLC 9, CA; *The Philotaxe* (1877) 3 Asp MLC 512.

⁷ *The Northampton* (1853) 1 Ecc & Ad 152 at 160. Cf *The Woburn Abbey* (1869) 3 Mar LC 240 (foul berth, though collision not for some days); *The Innisfail, The Secret* (1876) 3 Asp MLC 337 (foul berth and hurricane; inevitable accident).

⁸ *The Cumberland* (1836) Stuart's Vice Admiralty Court Cases Lower Canada 75 at 79. A vessel has been held to blame for coming to anchor in a bay during bad weather two cables ahead of another (*The Volcano* (1844) 2 Wm Rob 337), but a cable's length was held a clear berth in the Mersey (*The Princeton* (1878) 3 PD 90, 3 Asp MLC 562).

⁹ *The Vivid* (1873) 1 Asp MLC 601.

¹⁰ *Mary Tug Co v British India Steam Navigation Co, The Meanatchy* [1897] AC 351, PC.

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764. Precautions while vessel at anchor or moored alongside etc.

A vessel at anchor¹ ought to have a competent person on watch to see that the anchor light² is duly exhibited, and also do everything in his power to avert or minimise a collision³. While a ship at anchor is not entirely free from duties towards a ship underway, the ship at anchor ought not to alter her position or heading until it is apparent to her that the ship underway cannot by her own unaided action avoid a collision⁴. She must take proper precautions to prevent driving in heavy weather⁵, or in a tideway⁶. It may be her duty to shift her berth⁷, or to slip and put to sea⁸. A vessel coming last to a tier has been held in fault for not hauling out from it in bad weather, that being the only means of avoiding damage to a vessel alongside⁹. Moreover, when one vessel is lying on shore or in dock, and a second vessel is voluntarily placed where damage will occur if some probable event arises which it is not possible to control, the owners of the second vessel will be responsible¹⁰. The owners will be liable if a vessel moors where she will take the ground and heel over and damage another vessel¹¹. A vessel in dock with mooring ropes across the dock must keep a vigilant look-out for ships moving in the dock at tide time so that the obstruction may be readily removed¹².

1 As to the meaning of 'vessel at anchor' see PARA 749 note 3.

2 As to lights for vessels at anchor under the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 749. As to the Collision Regulations 1972 see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

3 *Mary Tug Co v British India Steam Navigation Co, The Meanachy* [1897] AC 351, PC. See also *Vanderplank v Miller* (1828) Mood & M 169; *Lake Seward* (1829) 4 C & P 106; *The Sedulity* [1956] 1 Lloyd's Rep 510 (steering vessel in charge of inexperienced deck-hand). Two persons have been considered sufficient look-out for an anchor watch: *The Christiana* (1849) 7 Notes of Cases 2 at 6. A ship moored to buoys in the Tyne was held to blame for not having an anchor watch: *The Pladda* (1876) 2 PD 34 at 39. A single watchman may suffice for a ship in a dock: *The Excelsior* (1868) LR 2 A & E 268 at 271. As to look-out generally see PARA 768.

4 *The Viper* [1926] P 37 at 40, 41, 17 Asp MLC 26 at 27, DC. As to rules under the Collision Regulations 1972 regarding action taken to avoid collision see PARA 727.

5 A single anchor may suffice for a vessel intending to stop for only one tide (*The Gipsy King* (1847) 2 Wm Rob 537), but not in a gale (*The Maggie Armstrong v The Blue Bell* (1865) 2 Mar LC 318). Cf *Argus v Volga* (1922) 11 Ll L Rep 102 (where in bad weather in Yarmouth Roads a vessel was held not to be negligent in lying to a single anchor). Persons who give the use of mooring appliances for value warrant their fitness (*Allen v Quebec Warehouse Co* (1886) 12 App Cas 101, PC), and port authorities which permit their use treat them as sufficient (*Doward v Lindsay, The William Lindsay* (1873) LR 5 PC 338 at 343, 2 Asp MLC 118 at 120). Sixty fathoms were found an improperly short cable for a vessel of 1,489 tons in the Mersey in a strong wind and tide: *The City of Cambridge* (1874) LR 4 A & E 161 (affd sub nom *Wood v Smith, The City of Cambridge* LR 5 PC 451, 2 Asp MLC 239); cf *The Peerless* (1860) Lush 30 (affd sub nom *Prowse v European and American Steam Shipping Co, The Peerless* (1860) Lush 103, PC (catching of cable on windlass an inevitable accident)). A ship has been held to blame for not getting a rope fast, when necessary, to a pier-head 800 feet off (*The Lyn* (1883) Pritchard's Admiralty Digest (3rd Edn) 291), and for not striking her top gear and yards (*The Ruby Queen* (1861) Lush 266; *The Excelsior* (1868) LR 2 A & E 268). See also *Manley v Kyles* (1923) 16 Ll L Rep 272 (where a vessel lying at buoys was negligent not to have her anchor out to avoid being set on the bank); *The Titan* (1922) 13 Ll L Rep 428 (standard of care required when floating crane left in river full of ships). As to inevitable accident see further PARA 817.

6 *Westfalen (Owners) v Oriana II (Owners)* (1919) 1 Ll L Rep 527.

- 7 *The Woburn Abbey* (1869) 3 Mar LC 240; *The British Holly* (1924) 20 LI L Rep 237 (where a steamer lying alongside another steamer failed to move in bad weather).
- 8 *The Uhla* (1867) 19 LT 89.
- 9 *The Patriotto v The Rival* (1860) 2 LT 301. As to conduct in bad weather generally see PARA 761.
- 10 *The Lidskjalf* (1856) Sw 117 at 119 (where a vessel heeled over as the tide fell, damaging a neighbouring vessel); *The Jacob* (1860) 12 Ir Jur 379. A barge ought not to be adrift in a dock like the Surrey Commercial Dock Basin, and at tide time when vessels are moving in and out ought not to be unattended: *War Tempest v Plym* (1921) 9 LI L Rep 489.
- 11 *The Jacob* (1860) 12 Ir Jur 379; *The Indian v The Jessie* (1865) 2 Mar LC 217 (damage to barge); *The Western Belle* (1906) 10 Asp MLC 279 (damage to moorings); but see *Dalton v Denton* (1857) 1 CBNS 672.
- 12 *The Theodoros, The Blidensol* [1923] P 26.

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765. Keeping clear of vessel at anchor.

It is the duty of every vessel seeing another at anchor¹, whether in a proper or improper place, and whether properly or improperly anchored², to take reasonable care to avoid a collision if practicable and consistent with her own safety³. A ship brought up in an exposed position has been held not to contribute to a collision with a ship driving into her⁴. It appears, however, that a vessel may be so lying at anchor as to require more than ordinary care to avoid her⁵. There is a similar duty to keep clear of a sailing vessel which is compelled at the moment to go about⁶, or of a vessel engaged in fishing, or of other disabled vessels⁷. There is a statutory duty not to run foul of any lightship, buoy or beacon⁸.

1 As to the meaning of 'vessel at anchor' see PARA 749 note 3.

2 For the rules of good seamanship concerning coming to anchor see PARA 763.

3 Cf *The Girolamo* (1834) 3 Hag Adm 169 at 173; *The Batavier* (1845) 2 Wm Rob 407; *The Lochlibo* (1850) 3 Wm Rob 310; *The Duna* (1860) 12 Ir Jur 384; *The Anne* (1860) 12 Ir Jur 360; *The Secret* (1872) 1 Asp MLC 318. Where a ship is weighing anchor, there is a duty on a vessel underway to keep clear: *HMS Trawler Argon II v Porthcawl (Owners)* (1920) 2 Ll L Rep 370. As to the burden of proof in such cases see PARA 786.

4 *The Despatch* (1860) Lush 98, PC.

5 *The Telegraph, Valentine v Cleugh* (1854) 1 Ecc & Ad 427 at 429, PC; cf *The Bothnia* (1860) Lush 52. In various American cases, the vessel at anchor has been held in such circumstances to have caused or contributed to the collision: see *Strout v Foster* (1843) 1 Howard 89; *The Scioto* (1847) Daveis 359; *The Clara* (1880) 12 Otto 200; *United States v St Louis and Mississippi Valley Transportation Co* 184 US 247 (1902). Cf *The Eurymedon* [1938] P 41, [1938] 1 All ER 122, 59 Ll L Rep 214, CA (vessel at anchor in improper position). An anchor which will form an obstruction in the fairway of a navigable river must be buoyed: *The Harkaway* [1928] P 199, 17 Asp MLC 503.

6 See PARA 773.

7 I.e. the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') r 18(a), (b) (see PARA 737). As to the Collision Regulations 1972 see PARA 715.

As to the duty to keep clear of a vessel in stays see PARA 773. In cases where a vessel has been unmanageable a collision has sometimes been held accidental: *The John Buddle* (1847) 5 Notes of Cases 387; *The Thornley* (1843) 7 Jur 659.

8 See the Merchant Shipping Act 1995 s 219(2); and PARA 1246. As to lighthouses and lightships see further PARA 1068 et seq.

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766. Steering gear.

A vessel using power-operated steering gear and navigating in crowded waters has been held to blame in some instances for not having her hand gear ready in case of a breakdown¹.

¹ *The Merchant Prince* [1892] P 179, 7 Asp MLC 208, CA; *The Turret Court* (1900) 69 LJP 117. See also the cases as to steering gear cited in PARA 818 note 8. As to the statutory requirements that must be met in the provision and use of equipment for navigation purposes generally see PARA 591 et seq.

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767. Tug assistance.

A vessel may be held to blame for manoeuvring without taking tug assistance when it is available and reasonably necessary. For example, a power-driven vessel getting up her anchors off Dover in a gale without tug assistance was liable for damage caused when she was driven ashore¹, and a sailing vessel was liable for damage caused when trying to bring up ahead of another vessel in the Downs after losing one anchor and without using available tug assistance².

1 *The Gertor* (1894) 7 Asp MLC 472. As to precautions for special weather conditions see PARA 761; and as to carrying and dropping anchor see PARA 762.

2 *The Annot Lyle* (1886) 11 PD 114, 6 Asp MLC 50, CA. As to tugs and tows generally see PARA 771.

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768. Officers and watch on look-out.

It is a lack of due care for a senior officer on watch to give up charge to a junior officer and go below while his vessel is actually manoeuvring for another vessel which is drawing near to her¹. To constitute a good look-out² on a ship, there must be a sufficient number of persons stationed for the purpose, who must know and be able to discharge that duty³. As a rule, except doubtless in the case of very small vessels, there ought to be a lookout forward⁴ besides the officer on the bridge, even on a fine day⁵. Sometimes the proper place for the look-out is, not forward, but on the bridge⁶. The crow's nest may be a proper place for a look-out⁷.

In deciding what is a proper look-out, the state of the weather and the proximity of vessels must be considered. The greater the necessity for the look-out owing to thick weather or otherwise, the more vigilant it should be. It is no excuse for a bad look-out to urge that no vigilance could have prevented the collision⁸. It has been held that a power-driven vessel proceeding at high speed in a crowded thoroughfare, or in fog, ought to have a double look-out forward⁹. It is a lack of due care for the look-out forward to be engaged on other duties, for example clearing the anchor¹⁰. There is no necessity as a rule for a vessel at sea at night, if she has a fixed stern light, to look out for vessels astern¹¹, but there may be if there is reason to suppose that a vessel so approaching does not see her¹². Failure to have any look-out is a breach of the International Regulations for Preventing Collisions at Sea 1972¹³, and it is no excuse that it was immaterial because the vessel had to keep her course¹⁴.

It is the duty of a vessel towing another to keep a look-out for both¹⁵, but this does not relieve the tow from keeping a good look-out, and even a pilot cutter being towed alongside a ship in tow of a tug has been held liable for not doing so¹⁶.

In a river, the duty of a look-out as to reporting lights is different from the duty in the open sea, because to report every light in a river would mean confusion. The duty is to report every material light¹⁷.

The look-out is stationed to see what vessels or obstacles are in the channel, and his attention is properly directed to this, and not elsewhere, for example to the Blue Peter of a vessel in a basin and just coming out¹⁸. If visibility is deceptive, it may be proper for the person in charge of the navigation of a vessel to make use of binoculars¹⁹.

Failure to appreciate that the vessel is dragging her anchor constitutes a bad look-out²⁰.

1 *Stoomvaart Maatschappij Nederland v Pensinsular and Oriental Steam Navigation Co* (1880) 5 App Cas 876 at 880, 896, 897, 4 Asp MLC 360 at 361, 366, HL. See also *The Arthur Gordon*, *The Independence* (1861) Lush 270 at 280, PC (where a ship in tow was held at fault for tug being left, while the tug master was at breakfast, in charge of a sailor, as he was not competent and failed to manoeuvre soon enough for another vessel).

2 As to the burden of proof of a good look-out see PARA 786 note 15.

3 *The George* (1845) 2 Wm Rob 386; *The Manchester Regiment* [1938] P 117, 60 Ll L Rep 279. As to anchor watch see PARA 764; and as to having a bargeman on a dumb barge in a river see PARA 775.

4 The look-out ought to be astern if the vessel is proceeding stem first: *The Juno* (1894) 7 Asp MLC 506 at 507.

5 *The Glannibanta* (1876) 1 PD 283 at 290, CA. See also *Netherlands Steam Boat Co v Styles, The Batavier* (1854) 9 Moo PCC 286; *London and Edinburgh Shipping Co v Eaton, The Iona* (1867) 2 Mar LC 479 at 481, PC; *The Hector* (1883) 52 LJP 47, 5 Asp MLC 101, CA; *The St Angus* [1938] P 225, 61 Ll L Rep 168.

6 Even where a river rule provided for a look-out at the bow, it was said that the proper place for the look-out in the circumstances was on the bridge instead, and that a pilot and two other persons there were a sufficient look-out: *Clyde Navigation Co v Barclay* (1876) 1 App Cas 790 at 797, 798, 3 Asp MLC 390 at 392, HL.

7 *The Bethania* (1 November 1910, unreported), CA, per Lord Alverstone CJ (ship in the English Channel off Beachy Head).

8 *The Mellona* (1847) 3 Wm Rob 7 at 11-13 (the duty to keep a good look-out is especially incumbent in hazy weather); *The Nevada* (1872) 1 Asp MLC 477; *The Milanese* (1881) Pritchard's Admiralty Digest (3rd Edn) 222, HL; but see *The Claudio* (1924) 18 Ll L Rep 442 (where the absence of look-out on the fo'c'sle head was held not to have contributed to the collision).

9 *The Europa* (1850) 14 Jur 627; *The Germania* (1869) 3 Mar LC 269, PC. See also *The Iron Duke* (1845) 4 Notes of Cases 94 (affd sub nom *Williams v Chapman* (1846) 4 Notes of Cases 585n, PC); *Londonderry (Owners) v Dolbadarn Castle (Owners)* (1845) 4 Notes of Cases, Supplement xxxi.

10 *The Bold Buccleugh* (1853) Pritchard's Admiralty Digest (3rd Edn) 221.

11 *The City of Brooklyn* (1876) 1 PD 276 at 279, 3 Asp MLC 230 at 233, CA; *The Reiher* (1881) 4 Asp MLC 478; cf *The Earl Spencer* (1875) LR 4 A & E 431, 2 Asp MLC 523; affd 3 Asp MLC 4, PC.

12 *The Anglo-Indian* (1875) 3 Asp MLC 1, PC. If a vessel is proceeding stern first, there is a duty to keep a look-out astern: see PARA 778.

13 See the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') r 5; and PARA 724. As to the Collision Regulations 1972 see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

14 *The Craigellachie* [1909] P 1 at 5, 11 Asp MLC 103 at 105 (dissented from on a different point in *The Grovehurst* [1910] P 316, 11 Asp MLC 440, CA).

15 *The Jane Bacon* (1878) 27 WR 35, CA.

16 *The Harvest Home* [1905] P 177, 10 Asp MLC 19, CA. A vessel sailing so close to another as to obstruct her own look-out has been held to blame: *The Zollverein* (1856) Sw 96 at 97. As to tugs and tows generally see PARA 771.

17 *The Shakkeborg* [1911] P 245n. In river rules it is sometimes prescribed that a master of a small steamer is to stand on the bridge, and in such a case he has been found to blame for bad look-out through not doing so: *The Wirrall* (1848) 3 Wm Rob 56 at 62, 64. As to navigating in rivers generally see PARA 776 et seq.

18 *James Moss & Co v African Steamship Co, The Calabar* (1868) LR 2 PC 238 at 242.

19 *The Gorm* [1961] 1 Lloyd's Rep 196 at 199. See also *The Hibernia* (1874) 2 Asp MLC 454 at 460, PC, and Lord Mersey's Report as regards *The Titanic* (1912) Times 31 July, p 8.

20 *The Gerda Toft* [1953] 2 Lloyd's Rep 249.

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769. Speed.

No particular speed by power-driven vessels or other vessels can be said absolutely to be dangerous, and whether any given speed is dangerous or not must depend on the weather, locality, sea room and other facts¹. Fog or clear, light or dark, no power-driven vessel has a right to navigate at such a speed that it is impossible for her to prevent damage by taking all precautions at the moment she sees damage to be possible or probable². When a vessel's lights are obscured by her own smoke so as to prevent her from seeing or being seen by ships approaching, it is negligence for her to proceed at full speed³.

1 *The Europa* (1850) 14 Jur 627 at 630; *The Milan* (1861) Lush 388. For the factors to be taken into consideration in determining a safe speed under the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see r 6(a), (b); and PARA 725. As to the Collision Regulations 1972 see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 *The Europa* (5 December 1851) PC (cited in Pritchard's Admiralty Digest (3rd Edn) 223; and in *The Pennsylvania* (1874) 2 Asp MLC 378). Cf *The Europa* (1850) 14 Jur 627; *The Great Eastern* (1864) 11 LT 5 at 8, PC; *The Kaiser Wilhelm II* (1915) 85 LJP 26, CA. For the requirement of the Collision Regulations 1972 that speed must be adapted for the prevailing conditions, especially in fog or other conditions restricting visibility, see r 19; and PARA 738. Where a speed for steamers is prescribed by byelaw, it means speed over the ground and not through the water: *The RL Alston* (1882) 8 PD 5, 5 Asp MLC 43, CA (decided under the Tees rule).

3 *The Rona, The Ava* (1873) 2 Asp MLC 182, PC; and see *The Puffin* (1925) 21 Ll L Rep 10 (vessel zigzagging to avoid her own smoke). Before lights were prescribed for vessels (cf *The Rose* (1843) 2 Wm Rob 1), and later when no lights astern had as yet to be shown (cf *The City of Brooklyn* (1876) 1 PD 276, 3 Asp MLC 230, CA), the speed of steamers at night was restricted, ten to 11 knots being held excessive in crowded waters. It is no excuse for a vessel going at excessive speed that she is under contract to carry government mails at a higher speed: see *The Vivid* (1856) Sw 88; affd sub nom *Churchward v Palmer, The Vivid* 10 Moo PCC 472.

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770. Standing close and speaking.

A vessel ought not to stand so close to another in bad weather that, if she is struck by a squall, there will be a collision¹. Thus, if a vessel tries to pass in a narrow space between vessels unnecessarily, she will be to blame for a collision which results from her doing so². A ship which approaches another to speak to her does so at her own risk³, and a sailing vessel ought not to run alongside another for this purpose while running before the wind⁴.

In the case of a fishing ground, even a sailing vessel has been held to blame for crossing the ground at excessive speed⁵, and power-driven vessels which choose to pass through a fleet of fishing vessels ought to regulate their speed so as to be able to keep out of the way of incumbered fishing vessels⁶.

In a river⁷, power-driven vessels must proceed only at a speed compatible with the safety of other vessels, and they have been held to blame for swamping other vessels by their wash⁸.

It is the duty of a power-driven vessel under the Collision Regulations 1972 and generally as a matter of good seamanship to slacken speed, or stop, or reverse, in order to avoid collision⁹.

1 *The Globe* (1848) 6 Notes of Cases 275. As to precautions in bad weather conditions see PARA 761.

2 *The Schwalbe* (1861) Lush 239, PC. As to vessels proceeding in convoy see *Port Chalmers v Kerry Range* (1921) 9 Ll L Rep 137 at 139.

3 *HMS Bellerophon* (1874) 3 Asp MLC 58. A pilot cutter ought to anticipate that a steamer wanting a pilot will take off her way and that, to do so, she will reverse her engines, and the cutter ought not to put herself so close to the steamer that, if the steamer does reverse, a collision is inevitable: *Pansy v Inchbrayock* (1921) 6 Ll L Rep 150.

4 *The Thames* (1805) 5 Ch Rob 345.

5 *The Pepperell* (1855) Sw 12.

6 *The Picton* [1910] P 46, 11 Asp MLC 358. A speed of nine knots in such a case has been held excessive with a bad look-out (*The Picton*), but not with a good one. See also *The Rose* (1843) 2 Wm Rob 1; *The Columbus* (1848) Pritchard's Admiralty Digest (3rd Edn) 239 (duty of vessel with a fair wind not to disturb a smack engaged in fishing); *The Margaret v The Tuscar* (1866) 15 LT 86; *Murphy v Palgreave* (1869) 21 LT 209 (where a steamer bore down on a yawl boat moored on a fishing ground, and touched her without damage; and three men who jumped overboard, in reasonable fear of their lives, recovered damages); *The Pacific* (1884) 9 PD 124, 5 Asp MLC 263. As to the duty to keep out of the way of fishing vessels imposed on other vessels by the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see r 18; and PARA 737. As to the Collision Regulations 1972 see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

7 As to navigation in rivers generally see PARA 776 et seq.

8 *The Batavier* (1854) 1 Ecc & Ad 378 at 382 (affd sub nom *Netherlands Steam Boat Co v Styles, The Batavier* 9 Moo PCC 286); *The Aruba* (1930) 37 Ll L Rep 225 (where in a narrow channel a vessel ahead was known to be in trouble; it was held unseamanlike to approach too close to her at full speed). Where, however, the sinking of a barge was due partly to the swell and partly to her being moored in a very exposed place, she could not formerly recover at common law owing to her contributory negligence (see *The Duke of Cornwall* (1862) Pritchard's Admiralty Digest (3rd Edn) 226), nor could she if her sinking was partly due to her being improperly trimmed (cf *Luxford v Large* (1832) 5 C & P 421; *Smith v Dobson* (1841) 3 Scott NR 336). See also

The Portia (1932) 44 Ll L Rep 295 (where the speed of ten knots was held to be excessive in passing the entrance to a draw dock in Woolwich Reach of the River Thames); *The Ausonia* (1933) 45 Ll L Rep 71 (where 15 knots was held not to be too high a speed to pass a barge properly equipped and battened down in Sea Reach). As to damage to barges by steamers see PARA 775.

9 See the Collision Regulations 1972 r 8(e); and PARA 727.

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(iii) Particular Classes of Vessels

771. Tug and tow.

When one vessel is in tow of another¹, the tug and tow owe certain duties towards each other and other vessels to prevent a collision. When, as is usual when a tug is towing barges² in a river, the tug controls the navigation and her master and crew are not the employees of the owners of the tow³, the duty of those on board the tow towards the tug appears to be substantially confined to following her manoeuvres⁴, and the tow is entitled to act on the belief that the tug will be reasonably well navigated⁵.

In the case of a ship in tow of a tug at sea or in a river⁶, it seems that, in the absence of special provisions in the contract of towage, the tow normally⁷ controls the navigation in order to avoid a divided command, and also because the pilot, if there is one, takes his station on the tow and the officers of the tow are usually of a higher class and better able to direct the navigation than those of the tug⁸.

The question of the relation between the tow and the tug is, however, one of fact, not law⁹. Even where the general direction is to be given by those on the tow, they are not constantly to interfere, and those in charge of the tug must use their judgment and not constantly expect orders from the tow¹⁰. When, however, there is a pilot on the tow, he is bound to give the tug proper directions and the tug is bound to obey them¹¹. If the tug does not get orders, she is responsible for the direction of the course¹². It is the duty of those on the tow¹³ to check the tug, and of those on the tug¹⁴ to warn the tow, if they know that the course which is set is dangerous. It is, in general, the duty of the tow to follow all the tug's manoeuvres¹⁵, and, when other vessels are likely to be met, to have the means ready of slipping or cutting the tow rope¹⁶.

1 As to the meaning of 'being towed' see PARA 743 note 3.

2 As to dumb barges see further PARA 775.

3 As to when the tug or tow takes control, and as to the liabilities of the tug and tow towards one another and third persons, see further PARAS 587 et seq, 812-813.

4 *The Jane Bacon* (1878) 27 WR 35, CA. When a tug sounds the regulation whistles, the tow need not sound her whistle (*The Marmion* (1913) 29 TLR 646); but see now the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') r 35(e); and PARA 753. As to the Collision Regulations 1972 see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

5 *Comet Lightship (Owners) v The WH No 1 (Owners) and The Knight Errant* [1911] AC 30, 11 Asp MLC 497, HL.

6 *The Isca* (1886) 12 PD 34 at 35, 6 Asp MLC 63 at 65.

7 Cf *Thomas Stone Shipping Ltd v The Admiralty, The Albion* as reported in [1953] P 117 at 133, CA (normal relationship of tug and tow was to prevail).

8 *The Niobe* (1888) 13 PD 55 at 59, 6 Asp MLC 300 at 302. See also *The Mary* (1879) 5 PD 14 at 16, 4 Asp MLC 183 at 184. See also PARA 589.

9 *The Isca* (1886) 12 PD 34 at 35, 6 Asp MLC 63 at 65; cf *Devonshire (Owners) v Leslie (Owners)* [1912] AC 634 at 656, 12 Asp MLC 210 at 213, HL. A ship in tow at night with a long hawser was held not to be under a duty to direct the movements of the tug: see *The Stormcock* (1885) 5 Asp MLC 470.

10 *The Isca* (1886) 12 PD 34 at 35, 6 Asp MLC 63 at 65; and see *Trishna (Owners, Master and Crew) v Panther and Ericbank (Owners), The Panther and the Ericbank* [1957] P 143 at 147, [1957] 1 All ER 641 at 647, [1957] 1 Lloyd's Rep 57 at 66 (pilot on ship could not be expected to direct engine movements of stern tug).

11 *The Duke of Sussex* (1841) 1 Wm Rob 270; *The Christina* (1848) 3 Wm Rob 27; *The Energy* (1870) LR 3 A & E 48 (order to try to ship the tow rope); *Smith v St Lawrence Tow-Boat Co* (1873) LR 5 PC 308, 2 Asp MLC 41 (orders to stop in fog); *Spaight v Tedcastle* (1881) 6 App Cas 217, 4 Asp MLC 406, HL.

12 *The Altair* [1897] P 105 at 115, 8 Asp MLC 224 at 229. See also *The Robert Dixon* (1879) 5 PD 54 at 58, 4 Asp MLC 246 at 248, CA.

13 *The Altair* [1897] P 105 at 116, 8 Asp MLC 224 at 229, 230. As to the duty to keep a look-out see PARA 768.

14 *Shersby v Hibbert, The Duke of Manchester* (1847) 5 Notes of Cases 470, PC. See also *Maridive VII v Key Singapore, The Key Singapore* [2004] EWHC 2227 (Comm), [2005] 1 All ER (Comm) 99, [2005] 1 Lloyd's Rep 91 (tugs towing a rig required to provide salvage services to the tow; fact-sensitive nature of any analysis of responsibility emphasised).

15 *The Jane Bacon* (1878) 27 WR 35, CA.

16 *The Jane Bacon* (1878) 27 WR 35, CA. As to the tug casting off the tow cf *The Annapolis, The Golden Light, The HM Hayes* (1861) Lush 355, PC; as to two vessels being in tow of a tug, and one being damaged by the grounding of the other without fault of the tug, see *Harris v Anderson* (1863) 14 CBNS 499; and as to the contract of towage see PARA 587 et seq.

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772. Tug and tow manoeuvring for other vessels.

Many of the ordinary obligations of a power-driven vessel as regards manoeuvring for other vessels are shared by a tug and her tow, because to a great extent they partake of the nature of such a vessel¹. However, when it would have been the duty of an ordinary vessel, on approaching another vessel so as to involve risk of collision, to stop her engines, a tug with a ship in tow has been held excused for not stopping them when she was going extremely slowly². A tug with a vessel in tow may be subject to the general duty, applicable to power driven vessels underway, to keep out of the way of a sailing vessel³.

1 *The Lord Bangor* [1896] P 28 at 33, 8 Asp MLC 217 at 218. See also *The Knarwater* (1894) 63 LJP 65, CA. As to special care to be taken by a tug lashed alongside her tow see *The Shanklin* (1932) 43 Ll L Rep 153; *Rio Verdi (Owners) v Abaris (Owners)* (1920) 2 Ll L Rep 411 (where it was held to be negligent to use an unduly long scope of towing hawser in Falmouth harbour).

2 *The Lord Bangor* [1896] P 28, 8 Asp MLC 217. As to risk of collision see PARA 726.

3 See the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') r 18(a); and PARA 737. If, however, the tug is a vessel restricted in her ability to manoeuvre, the sailing vessel must keep out of her way: r 18(b). As to the meaning of 'vessel restricted in her ability to manoeuvre' for these purposes see PARA 730 note 24. As to the Collision Regulations 1972 see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

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773. Sailing vessels.

One general rule as regards sailing vessels¹ is that, when a vessel is in stays or in the act of going about, she becomes for the time being unmanageable, and in this case it is the duty of another vessel which ought otherwise to have kept her course to execute any practical manoeuvre which would prevent collision². However, when a vessel goes about very near to another, and without giving any indication from which that other can be warned in time to prepare to give room, the damage may arise from the fault of those in charge of the vessel going about at such an improper time or place³.

When a vessel which ought to keep out of the way of another has thrown herself into stays, she ought still to take any reasonable steps to avoid collision⁴. When a sailing vessel beating up a river has gone as near one shore as she can safely go so as to avoid collision with vessels at anchor, she is entitled to go about without warning to other vessels; and it is the duty of a power-driven vessel coming up astern to know, from her position and the state of her sails, that she is going about, and to keep out of her way⁵. It is the duty of a sailing vessel following another to go about when the leading vessel is compelled to go about⁶.

A sailing vessel is entitled to wear instead of staying, but ought not to resort to the extraordinary operation of wearing unless she is sure that she has room to do so safely⁷.

A vessel hove-to⁸ should exercise more than ordinary care not to obstruct navigation⁹. Heaving-to in the track of ships and lying with helm lashed alee may be negligence¹⁰.

In manoeuvring for other vessels, it is the duty of a sailing vessel to use her sails to assist her helm when necessary¹¹.

1 For the rule contained in the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') for determining which of two approaching sailing vessels is to give way to the other see r 12; and PARA 731; and for the duty of a power-driven vessel to keep out of the way of a sailing vessel see r 18; and PARA 737. As to the meaning of 'vessel restricted in her ability to manoeuvre' for these purposes see PARA 730 note 24. As to the Collision Regulations 1972 see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 *The Ida v The Wasa Nicolaistadt* (1806) 15 LT 103; *Wilson v Canada Shipping Co* (1877) 2 App Cas 389, PC.

3 *The Leonidas* (1841) 1 SVAR 226 at 229; *The Mobile* (1856) Sw 69 (on appeal Sw 127, PC). The burden of proof is first on the vessel to show that she is in stays (which is almost the same as at anchor), and then on the other vessel to show that the first vessel was improperly in stays or otherwise: *The Sea Nymph* (1860) Lush 23. A vessel has a duty to take a proper survey of the sea around her before going into stays: *The Allan v The Flora* (1866) 2 Mar LC 386.

4 *The Kingston-by-Sea* (1849) 3 Wm Rob 152 at 158 (through making her pay off before the wind, by squaring the mainyard); *Wilson v Canada Shipping Co* (1877) 2 App Cas 389, PC (by getting sternway on her).

5 *The Palatine* (1872) 1 Asp MLC 468. The vessel in stays, when the state of her canvas is not visible to the other vessel, should warn the other vessel in sufficient time: *Wilson v Canada Shipping Co* (1877) 2 App Cas 389, PC. The sailing craft tacking in a narrow channel has to behave reasonably, and under proper conditions an overtaking tug with barges in tow may go ahead: *Union Lighterage Co Ltd v Sailing Barge Shamrock* (1921) 6 Ll L Rep 154. As to navigation in rivers generally see PARA 776 et seq.

6 *The Priscilla* (1870) LR 3 A & E 125; cf *The Annie* [1909] P 176 at 179, 11 Asp MLC 213 at 214. As to not standing too close in a time of squalls cf *The Plato v The Perseverance* (1865) Holt Adm 262; and see PARA 770.

7 *The Falkland, The Navigator* (1863) Brown & Lush 204, PC.

8 As to coming to anchor and precautions while at anchor see PARAS 763, 764.

9 *The Eleanor v The Alma* (1865) 2 Mar LC 240.

10 *The Attila* (1879) 5 QLR 340.

11 *The Lady Anne* (1850) 15 Jur 18; *The James* (1856) Sw 55, 60, PC; *The Ulster* (1862) 1 Mar LC 234, PC (duty of schooner to run her outer jib to assist in turning her head); *The Marpesia* (1872) LR 4 PC 212, 1 Asp MLC 261 (assist helm by hauling in head-sheets and letting go lee braces, if there is time).

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774. Dangerous vessels.

If a ship is fitted with a latent instrument of danger, for example a ram on a warship, those who have control of it are bound to take all reasonable precautions to ensure that it shall not cause damage to other vessels, for example by giving notice of it. The obligation to give notice is, however, dependent on having a reasonable opportunity to do so; and there is no obligation to give it unless there is a reasonable probability of danger to the other vessel from want of it¹. Vessels carrying explosives or petroleum are subject to special byelaws while in most harbours or canals².

1 *HMS Bellerophon* (1874) 3 Asp MLC 58.

2 See **EXPLOSIVES** vol 17(2) (Reissue) PARA 990 et seq.

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775. Dumb barges.

A dumb barge¹ in a river, in the absence of any rule of the road, regulation or custom to prevent it, may navigate on either side of the river², and in the deep water, even though she thereby obstructs larger vessels, having as much right as they to the advantage of a swift stream³. There is no duty imposed by statute on a dumb barge to get out of the way of a steamer; on the contrary, it is the steamer's duty to keep out of her way⁴.

In fog, a dumb barge which has no duty to carry an anchor and no means of bringing up is entitled to keep going until she comes into contact with something to which she can make fast⁵.

Whether a barge when not underway ought to have a man in charge of her depends on the circumstances. One important factor is whether it is usual in the circumstances to have a man in charge, but this is not conclusive⁶. The principle of the cases as regards barges, even when in dock, has been that it is negligence not to have a man in charge if there are dangers likely to be incurred which he could prevent, and which are so obvious that they ought to be prevented. The same principle applies wherever a barge is situated, whenever a man should be present on account of the run of the river or exposure of the barge⁷.

1 A dumb barge is a barge without sails or helm: *The Barge T-429* [1957] 1 Lloyd's Rep 135 at 137. It is a barge which, with the exception of two small cabins at the ends, is altogether undecked and open for the reception of cargo: *Helios A/S v Ekman & Co* [1897] 2 QB 83 at 87, CA.

2 *The Owen Wallis* (1874) LR 4 A & E 175 at 177, 2 Asp MLC 206 at 207. As to navigation in rivers generally see PARA 776 et seq.

3 *The Ralph Creyke* (1886) 6 Asp MLC 19. There is nothing negligent in one keel driving up river on the flood tide lashed to another keel, they together taking up no more room than a steamship: *The Ralph Creyke*.

4 *The Owen Wallis* (1874) LR 4 A & E 175 at 177, 2 Asp MLC 206 at 207. As to the duty to get out of the way see the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') r 18 (cited in PARA 737); and as to damage to barges by the swell of steamers see PARA 770. As to the Collision Regulations 1972 see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

5 *The Rose of England* (1888) 6 Asp MLC 304, PC.

6 *The Scotia* (1890) 6 Asp MLC 541; *The Western Belle* (1906) 10 Asp MLC 279 (absence of man not negligence).

7 *The Western Belle* (1906) 10 Asp MLC 279. A dumb barge at night with her head fast to another barge at a tier is in fault for swinging athwart the fairway of a river with no one on board to show a light or warn approaching vessels: *The St Aubin* [1907] P 60, 10 Asp MLC 298 (barge alone to blame). When a barge was fast by her head rope in dock, with her stern swinging out as an obstacle, but there was plenty of light, and a tug coming down the dock struck her, the absence of a bargeman was held to have nothing to do with the collision: *The Hornet* [1892] P 361, 7 Asp MLC 262, PC. Where a barge was moored in barge roads and out of the track, and it was not usual to have a man on board, his absence was held not to be negligence, even though, if on board, he might have averted the damage: *The Western Belle* (1906) 10 Asp MLC 279. Where, however, a steamer and barge were moored in dock at night, and the steamer got underway and her propeller struck the barge, and a bargeman would have avoided the accident, his absence was held to be negligence contributing to the collision, although it was not usual to have a man on a barge in dock: see *The Scotia* (1890) 6 Asp MLC 541;

cf *The Dunstanborough* (1891) [1892] P 363n (absence negligent); and see *Lack v Seward* (1829) 4 C & P 106 (where the plaintiff could not recover at common law if the accident would have been avoided but for the negligence of his men in not being on board a barge when it was lying in a dangerous place); *The Barge T-429* [1957] 1 Lloyd's Rep 135 (where a dumb barge, left unattended when a storm was approaching, broke from her moorings and collided with a schooner, and the onus was on her owners to rebut negligence).

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(iv) Navigation in Rivers and Narrow Waters

776. Tide and current.

When an exceptional current or tide occurs at a place at distant intervals, but may occur at any time, a cautious seaman is bound to keep in view its possibility and be prepared for it; and, if those in charge of a vessel are caught unprepared by such a current because they think that there is no possibility of it, they will be at fault¹. Where an eddy noted in the charts prevented a vessel's rudder from acting, so that a collision occurred, but the necessity for using the wheel arose from the other vessel proceeding along the wrong side of a channel and suddenly coming out, the first vessel had a right to expect that the coast would be clear and was held not to blame².

¹ *The City of Peking Compagnie des Messageries Maritimes, The City of Peking* (1888) 14 App Cas 40, 6 Asp MLC 396, PC. Those who allege an unusual eddy as excusing them should give positive evidence of it; it is not enough to say that a strong eddy must have caught the vessel, otherwise she would have come round: *The Polynésien* [1910] P 28 at 31, 11 Asp MLC 354 at 357.

² *Scicluna v Stevenson, The Rhondda* (1883) 8 App Cas 549, 5 Asp MLC 114, PC. As to the 'narrow channel rule' see PARA 728.

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777. Waiting at a bend.

In a tidal river where there is a sharp bend, a power-driven vessel having the tide against her should ease her engines and wait under the point until another vessel coming with the tide has cleared her¹. Where a power-driven vessel coming up with the tide failed to answer her wheel at a sharp and dangerous bend in the river owing to the eddy, another such vessel coming down against the tide was held to blame for the collision, owing to her not having waited for the first vessel to clear the bend². A power-driven vessel proceeding down a difficult reach in a river against the flood tide in darkness and poor visibility ought to navigate with great care and great caution, because on a flood tide vessels will probably be met, and she has a special duty to keep a good look-out³.

1 *The Talabot* (1890) 15 PD 194, 6 Asp MLC 602 (where the rule as to waiting was applied, although there was also a rule that the vessels should pass port to port). See also *The Prinses Juliana* [1936] P 139, [1936] 1 All ER 685, 18 Asp MLC 614 (where both a harbour byelaw which required a vessel navigating against the tide to ease and, if necessary, wait, and the narrow channel rule, which requires vessels to keep to starboard and pass port to port, were applicable): *The Timandra, Georgia (Owners) v Timandra (Owners)* [1956] 2 All ER 531, [1956] 1 WLR 691, [1956] 1 Lloyd's Rep 466. As to the 'narrow channel rule' under the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see r 9(a); and PARA 728. As to the duty under those rules to signal before rounding a bend see PARA 752. As to the Collision Regulations 1972 generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

In *The Smyrna* (1864) 11 LT 74, PC, it was held that, in the absence of any regulations governing the matter, common prudence required that a vessel ascending a bend in the Danube with a strong current should place herself out of the strength of the current, so as to allow full swing to the descending vessels.

2 *The Ezardian* [1911] P 92, 11 Asp MLC 602.

3 *The Trident* (1854) 1 Ecc & Ad 217 at 220, 223. As to the duty to keep a look-out see PARA 768; and as to precautions in special weather conditions see PARA 761.

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778. Dredging up stern first.

A power-driven vessel proceeding up river with a strong tide and approaching a bend may be held to blame for not swinging round and dredging up stern first, according to local practice, in order to avoid excessive speed¹. Any vessel proceeding up river stern first at night should exhibit a stern light to down-coming vessels² and should keep a look-out up river³, and, if a power-driven vessel, should give some signal⁴ to prevent a mistake by down-coming vessels⁵. When a keel with her mast lowered, lashed to another keel, was driving up the deep water channel of a river on the flood tide, it was held that both keels should have dredged up, so that, by keeping the anchor on the ground, they could practically steer themselves and by letting the anchor hold could bring themselves to a standstill⁶.

1 *The Frankfort* [1910] P 50, 11 Asp MLC 326, CA. As to the duty to wait at a bend see PARA 777.

2 Cf *The Indian Chief* (1888) 14 PD 24, 6 Asp MLC 362. As to the meaning of 'stern light' under the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 740 note 7. As to the Collision Regulations 1972 generally see PARA 715.

3 As to the duty to keep a look-out see PARA 768.

4 Eg a prolonged blast on her whistle (*The Juno* (1894) 7 Asp MLC 506); or three short blasts (*The Battersea* (1912) Shipping Gazette, 14 February). As to the meaning of 'short blast' under the Collision Regulations 1972 see PARA 752 note 8; and as to the meaning of 'prolonged blast' under those Regulations see PARA 752 note 19.

5 *The Juno* (1894) 7 Asp MLC 506.

6 *The Ralph Creyke* (1886) 6 Asp MLC 19. As to a duty to dredge up river if underway in a dense fog cf *The Aguadillana* (1889) 6 Asp MLC 390.

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779. Warping; smelling the ground.

If a vessel chooses to use a particular mode of going down river at a time which makes it difficult for her to escape collision, she must bear the consequences of a contingency to which she has exposed herself. Accordingly, when a steamship was warping down river against the flood, it was held to be no excuse that she was incapable of getting out of the way¹.

When those in charge of a vessel are navigating a river where they know there is a risk of her smelling the ground, they ought, if necessary by occasionally stopping their engines, to keep her so well under control as to be able to avoid collision with other vessels in case she smells the ground and fails to answer her wheel².

1 *The Hope* (1843) 2 Wm Rob 8. As to the 'narrow channel rule' under the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see r 9(a); and PARA 728. As to the Collision Regulations 1972 generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 *The Ralph Creyke* (1886) 6 Asp MLC 19. As to precautions to be taken to allow for tide and current see PARA 776.

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780. Crossing or turning in a river.

It is not uncommon to have a byelaw in a river to the effect that a vessel crossing must keep out of the way of other traffic¹. Such a rule does not mean that, if two vessels come into collision, the one which is crossing is necessarily to blame². The whole river belongs to everybody and nobody has an exclusive occupation of the road. If a vessel is properly endeavouring to get to the other side of the river as soon as practicable, and is doing that in a proper way, she is merely making a legitimate use of the river³. The crossing vessel may cross if there is the time and opportunity to do so without hampering another vessel, and the other vessel which sees a vessel about to cross must act reasonably with regard to her, and, if the crossing vessel wants a little more room to assist her in crossing, must give it.

The weight of responsibility for the operation at the outset is, however, principally on the vessel crossing, in that she must see whether she has room to cross⁴. Where one vessel about to cross is near a second vessel which must act for her if she crosses, those on the first vessel ought to make up their minds at once whether to cross or not and indicate their intention in an unmistakable way⁵. Similarly, a burden is sometimes placed on a vessel turning in a river either not to cause damage to other vessels⁶ but to complete her turn in a proper manner, using no more water than is necessary⁷, or, if a power-driven vessel, to give certain sound signals⁸. A vessel has been found at fault for trying to turn around too sharply across the course of another vessel in the Bosphorus⁹.

1 As to the application of the crossing rule for narrow channels contained in the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see r 9(d); and PARA 728. As to the Collision Regulations 1972 generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 *The Thetford* (1887) 6 Asp MLC 179 (decided under the Rules for the Navigation of the River Tyne).

3 *The Thetford* (1887) 6 Asp MLC 179 at 180.

4 *Hogstad v Coombe Dingle* (1921) 8 Ll L Rep 153 at 155; *The Oldekerk* [1974] 1 Lloyd's Rep 95. Under Thames rules, it is the duty of a vessel which is about to cross into the main stream of traffic to observe, before she does so, what traffic is approaching in the main stream and not to cross the stream before it is safe to do so: *Hogstad v Coombe Dingle*.

5 *The Skipsea* [1905] P 32 at 37, 41, 10 Asp MLC 91 at 93, 94.

6 See eg the Tyne Rules 1884 art 22.

7 *The Australmead* [1924] P 36, 16 Asp MLC 247.

8 As to sound signals under the Collision Regulations 1972 see PARAS 751-755. Signals should be sounded repeatedly: *The Lillois* [1955] 1 Lloyd's Rep 383. The vessel having given the turning signal must not put herself athwart the stream and continue to come on athwart: *The Australmead* [1924] P 36, 16 Asp MLC 247 (decided on the former Humber Rules 1910 art 14).

9 *Chittagong (Owners) v Kostroma (Owners)* [1901] AC 597, 9 Asp MLC 252, PC.

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781. Anchoring in fairway.

A vessel is justified in anchoring¹ in the fairway² of a river if overtaken by a dense fog, but those in charge ought to move her as soon as they reasonably can³. It is improper for a vessel to anchor so that she lies athwart the fairway⁴, but, when a vessel is compelled by damage from a collision occasioned by no fault of hers to drop her anchor, it is not negligent to drop it in the fairway in what would otherwise have been an improper place⁵. It is not necessarily unlawful in fine weather to anchor in a river in the track of a ferry boat⁶. A vessel which lays out her anchor in the fairway of a navigable river, and thereby creates danger for other craft, is under a duty to mark the anchor by a buoy or otherwise⁷.

1 As to coming to anchor and precautions while at anchor see PARAS 763, 764.

2 As to the meaning of 'fairway' see PARA 728 note 4.

3 *The Aguadillana* (1889) 6 Asp MLC 390 at 391. As to special weather conditions see PARA 761.

4 *The Eurymedon* [1938] P 41, [1938] 1 All ER 122, 59 Ll L Rep 214, CA.

5 *The Kjobenhavn* (1874) 2 Asp MLC 213, PC. A vessel anchoring near a channel where there are a number of vessels passing must exhibit lights, whether required by harbour regulations or not: *The Victoria* (1854) 7 Ll Jur 94.

6 *The Lancashire* (1874) LR 4 A & E 198 at 200, 2 Asp MLC 202 at 204.

7 *The Harkaway* [1928] P 199, 17 Asp MLC 503.

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782. Aground in the fairway.

Apart from any regulations¹, those in charge of a vessel aground at night in the fairway² of a navigable channel are bound to take proper means to apprise other vessels of her position³. A vessel at anchor in a fog which neglects to give prescribed signals⁴ may be partly at fault for the collision, even if the other vessel had no right to be underway⁵.

1 Ie apart from the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') r 20 (see PARA 739) and any local regulations. As to the Collision Regulations 1972 generally, which make allowance for certain categories of local rules, see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 As to the meaning of 'fairway' see PARA 728 note 4.

3 *The Industrie* (1871) LR 3 A & E 303 at 308, 1 Asp MLC 17 at 18, 19 (no light shown); *The Bromsgrove* [1912] P 182, 12 Asp MLC 196. A steamship in the Firth of Clyde suddenly stopping to anchor ought to signal by whistle to vessels approaching from astern, even though she is carrying a stern light: *The Queen Victoria* (1891) 7 Asp MLC 9, CA.

4 Ie prescribed by a byelaw or by the Collision Regulations 1972 r 35 (sound signals in restricted visibility) (as to which see PARA 753).

5 *The Clutha Boat 147* [1909] P 36 at 42, 11 Asp MLC 199 at 201. See also *The Blue Bell* [1895] P 242, 7 Asp MLC 601, DC; *The Lake Farragut* [1921] P 305. As to the right of a vessel to be underway in a fog see PARA 761.

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783. Incoming vessel to wait for outgoing.

When an incoming and an outgoing vessel are approaching the entrance to a dock or harbour¹ so as to reach it at about the same time, and there is not room for them to pass each other there, it is the ordinary rule that the incoming vessel should wait to enter until the outgoing vessel has got clear². Where a vessel is coming out of dock to turn up or down river, another vessel is entitled to take for granted that she will resort to all the means proper for the purpose; and, if a vessel, for example by not running up her jib, fails to take such means, and so causes a collision, she is to blame for it³.

1 The entrance to a harbour may be a narrow channel for the purposes of the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972'): see PARA 729. As to the Collision Regulations 1972 generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 *Taylor v Burger* (1898) 8 Asp MLC 364, HL. Cf *The Henry Morton* (1874) 2 Asp MLC 466 at 467, PC (duty to stop or go under the stern of outgoing vessel); and see *The Hazelmere* [1911] P 69, 11 Asp MLC 536, CA; *Balaena v Cairngarth* (1921) 6 Ll L Rep 354 (River Mersey).

3 *Laird v Brownlie, The Ulster* (1862) 1 Moo PCCNS 31 at 41. Cf *The Mourne* [1901] P 68, 9 Asp MLC 155 (where a vessel, having already begun to swing to port before coming out of dock, was held not bound to give the signal for an alteration of course to port, nor to stop her engines, on seeing another vessel); *The Sunlight* [1904] P 100, 9 Asp MLC 509 (where the out-coming vessel was held at fault while in the half-tide lock for not seeing the lights of the vessels in the river and for not easing her engines and starboarding). When there is a regulation as to a vessel lying off at a specified distance, if there are several vessels waiting to enter, this is intended to preserve order among those competing for entrance, and is not intended to excuse the erratic and dangerous movements of another vessel: *Richelieu and Ontario Navigation Co v Taylor* [1910] AC 170 at 174, 11 Asp MLC 315 at 317, PC. See also *The Oldekerk* [1974] 1 Lloyd's Rep 95. As to the application of the crossing rule contained in the Collision Regulations 1972 r 15 to a vessel coming out of a dock see PARA 734.

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784. Obeying orders of dock master or harbour master.

It is the duty of a harbour master or dock master¹ to consider the interests of all the shipping under his care, and he is entitled to order a vessel to move from her berth if a second vessel, which is disabled, absolutely requires the protection of this berth, while the first vessel can with care do without it, even if in the interests of the first vessel alone to move would be injudicious². The harbour master is under a duty to give warning to those in charge of a vessel of a concealed danger, the existence of which they cannot reasonably be expected to know³. A dock master has authority to give directions to a vessel which is coming into dock⁴, and to order a ship to leave the premises of the dock authority⁵. The primary duty of those in charge of a vessel is obedience to the orders of the harbour master or dock master; it is not their duty in any doubtful case to consider whether the order is right or wrong. If however, it is certain that a disaster will happen by obeying an order, then, and then only, ought it to be disobeyed⁶.

1 As to the powers of a harbour master with regard to the control of shipping see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 693 et seq. 'Harbour master' for this purpose includes a dock master.

2 *The Excelsior* (1868) LR 2 A & E 268. In such a case, the master of the vessel ought to move her, and may be in fault if he has not sufficient crew on board to protect his vessel against ordinary perils: *The Excelsior*. See also **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 690.

3 *Robertson v Portpatrick and Wigtownshire Joint Committee* 1919 SC 293.

4 *Reney v Kirkcudbright Magistrates* [1892] AC 264 at 269, 7 Asp MLC 221 at 222. See also **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 691.

5 *The Sunlight* [1904] P 100 at 112, 9 Asp MLC 509 at 512.

6 *Taylor v Burger* (1898) 8 Asp MLC 364 at 365, HL; *Cory & Son Ltd v France, Fenwick & Co Ltd* [1911] 1 KB 114, 11 Asp MLC 499, CA. When a signal was given for a sailing vessel to enter a narrow channel leading to a dock, a tug was held to blame for entering the channel to pick up a buoy and thereby obstructing the sailing vessel and causing a collision: *The Effort* (1847) 5 Notes of Cases 279; *The Rockabill* [1937] P 93, [1937] 1 All ER 191, 56 Ll L Rep 149, CA. As to liability when a vessel acting under the orders of a harbour master or dock master is involved in a collision see PARA 814.

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(5) NEGLIGENCE CAUSING DAMAGE; FAULT

(i) Negligence Causing Damage

785. Cause of action.

The ordinary case of negligence causing damage by collision is that of one vessel coming into collision with another vessel. In these circumstances, in order to establish a right of action against the owner of a vessel, the court must decide that:

- 1021 (1) there was a collision;
- 1022 (2) damage was done by it; and
- 1023 (3) the collision or damage was caused wholly or in part by the fault of the owner or a person for whose act or omission he is responsible¹.

Impact of two vessels without damage gives no right of action², but, if the defendant's negligence has caused the damage, although not the collision, he will be at least partly at fault³. Impact and damage without fault on the part of those in charge of a vessel give no right of action in rem against the vessel⁴, and the damage is then either an inevitable accident or is due to the fault of the other party or some other person⁵.

Special arrangements have been made⁶ as regards the settlement of claims in respect of death or personal injury in connection with the operation of vessels of visiting forces in the United Kingdom or its territorial waters⁷.

1 *The Margaret* (1881) 6 PD 76 at 79, 4 Asp MLC 375, CA; *The Thomaseverett* [1981] 1 Lloyd's Rep 1, CA. As to the prevention of collisions see PARA 715 et seq.

2 *The Margaret* (1881) 6 PD 76, 4 Asp MLC 375, CA. Cf *Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd, The Wagon Mound* [1961] AC 388 at 425, [1961] 1 All ER 404 at 415, [1961] 1 Lloyd's Rep 1 at 11, PC (no liability in tort until damage done).

3 *The Margaret* (1881) 6 PD 76 at 79, 4 Asp MLC 375 at 377, CA. The defendant will not, however, be liable for his anchor wrongly projecting, even if it is the instrument of damage, provided that the claimant's vessel could see it and with ordinary care avoid it: *The Monte Rosa* [1893] P 23, 7 Asp MLC 326. The defendant may be only partly at fault if there ought to have been a crew member on the other vessel who ought to have veered the vessel away: *The Dunstanborough* (1891) [1892] P 363n; and see *The Vectis* [1929] P 204, 17 Asp MLC 574. Where a collision is caused by the fault of one vessel and the damage resulting is augmented by the fault of the other, both must be held to blame: *The Kaiser Wilhelm II* (1915) 85 LJP 26, CA. As to the division of liability between both parties see PARA 796 et seq.

4 *Morgan v Castlegate Steamship Co, The Castlegate* [1893] AC 38 at 52, 7 Asp MLC 284 at 288, HL. In a claim made in respect of a collision the property is not treated as the delinquent per se: *Morgan v Castlegate Steamship Co, The Castlegate* at 52, 288. As to actions in rem for damage done by or to a ship see PARA 839.

5 As to incidence of liability see PARA 808 et seq; and as to inevitable accident particularly see PARAS 817, 818.

6 I.e. under the Visiting Forces Act 1952 s 9 (settlement of claims against visiting forces): see **ARMED FORCES** vol 2(2) (Reissue) PARA 149.

- 7 See the London Gazette dated 4 June 1954 p 3338; the Law Society's Gazette dated June 1954 p 241.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/8. AVOIDANCE OF COLLISIONS/(5) NEGLIGENCE CAUSING DAMAGE; FAULT/(i) Negligence Causing Damage/786. Burden of proof.

786. Burden of proof.

In the case of collision between vessels, the burden of proof usually at first rests on the claimant¹, even if the defendant has broken one of the International Regulations for Preventing Collisions at Sea 1972², or even if he alleges inevitable accident³ or admits that he is partly at fault⁴.

Where the evidence on both sides is nicely balanced and conflicting, the court will be guided by the probabilities of the cases set up⁵. The reasonable way to do so is to analyse the facts in order to ascertain the principal subject of inquiry on which the case hinges, and to endeavour to arrive at a satisfactory conclusion as to the testimony upon that matter⁶.

The claimant cannot succeed, however, if the case is left in doubt⁷, and it is for him to adduce preponderating evidence⁸. By proving certain circumstances, the claimant may shift the burden of proof on to the defendant⁹.

Thus, where a vessel underway in daylight and clear weather runs down a vessel at anchor, the burden, when those facts are admitted or proved, is on the owners of the vessel underway to prove they were not at fault¹⁰.

In a similar case at night, the owner of the vessel at anchor establishes a prima facie case when he has shown that his vessel had a proper light¹¹.

It is prima facie evidence of negligence for a vessel to drag her anchor or break adrift from her moorings¹² and for a barge to sink and get into such a position that a steamer alongside her sits on her¹³. Where, on the undisputed evidence of the circumstances leading up to a collision, a prima facie case of negligence is made out against a ship, it is not sufficient rebuttal to show that her steering gear jammed. It must be shown that the jamming could not have been avoided by the exercise of reasonable care and skill, or at any rate that all reasonable care and skill was used to prevent the jamming and that the gear might reasonably have jammed from a cause which could not have been prevented by such care and skill¹⁴.

The defendant in a collision case is usually bound to prove those facts which are peculiarly or exclusively within his knowledge¹⁵.

1 *The Bolina* (1844) 3 Notes of Cases 208 at 210. As to the burden of proof of consequential damage see the dictum of Hill J in *The Waalstroom* (1923) 17 Ll L Rep 53, approved by Bankes LJ in *The Paludina* [1925] P 40 at 43, 16 Asp MLC 453 at 455. As to the burden of proof generally see **CIVIL PROCEDURE** vol 11 (2009) PARA 769 et seq.

2 As to contraventions of the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 1196. As to the Collision Regulations 1972 generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

3 *The Otter* (1874) LR 4 A & E 203, 2 Asp MLC 208. As to inevitable accident see PARAS 817, 818.

4 *The Cadeby* [1909] P 257, 11 Asp MLC 285.

5 *The Mary Stewart* (1844) 2 Wm Rob 244.

6 *The Singapore and The Hebe* (1866) LR 1 PC 378.

7 *The City of London* (1857) Sw 300 at 302, PC. If the defendant gives a reasonable explanation consistent with the accident happening without his negligence, the burden of proof is shifted back to the claimant: see *The Kite* [1933] P 154, 46 Ll L Rep 83; *The Mulbera* [1937] P 82, 57 Ll L Rep 31; cf *The Stranna* [1937] P 130 at 147, [1937] 2 All ER 383 at 391, 19 Asp MLC 115 at 120 (affd without reference to burden of proof [1938] P 69, [1938] 1 All ER 458, 60 Ll L Rep 51, CA). See also the text and note 9.

8 *The Ligo* (1831) 2 Hag Adm 356.

9 *The Carron* (1853) 1 Ecc & Ad 91 at 93. A vessel at anchor in a fog does not have on her the onus of showing and proving that the sound signals she was making were audible in the vessel approaching; if she is sounding the regular signals, it is for the vessel coming into collision to show some reason or excuse for the accident: *The Valdes* (1914) 31 TLR 144. See also *Westfalen (Owners) v Orana II (Owners)* (1919) 1 Ll L Rep 527, HL. As to the application of the maxim *res ipsa loquitur* see **NEGLIGENCE** vol 78 (2010) PARA 64 et seq; and as to shifting the burden of proof generally see **CIVIL PROCEDURE** vol 11 (2009) PARA 769.

10 *The Annot Lyle* (1886) 11 PD 114, 6 Asp MLC 50, CA; *The City of Peking* (1888) 14 App Cas 40, 6 Asp MLC 396, PC. Where, however, the defence is that the vessel was anchored in such an improper place and so improperly that she could not in the circumstances be avoided by ordinary care, the claimant may have to prove proper anchoring: cf *The Telegraph, Valentine v Cleugh* (1854) 1 Ecc & Ad 427 at 429, PC; *The Eurymedon* [1938] P 41, [1938] 1 All ER 122, 59 Ll L Rep 214, CA. So also the burden from the outset lies on a vessel which runs down a vessel fishing with drift nets and with proper lights up: see *The Sisters* (1852) Pritchard's Admiralty Digest (3rd Edn) 248.

11 *The Indus* (1886) 12 PD 46, 6 Asp MLC 105, CA. As to the lights prescribed for a vessel at anchor under the Collision Regulations 1972 see PARA 749. As to the burden of proof in a collision with a vessel in stays see *The Sea Nymph* (1860) Lush 23.

12 *London v Exeter City and Sea Serpent* (1922) 12 Ll L Rep 423; *The Barge T-429* [1957] 1 Lloyd's Rep 135; cf *The Aralia* (1949) 82 Ll L Rep 884 (where the defendants provided a reasonable explanation of how the accident might have occurred without negligence on their part and the burden of proof shifted back to the claimants).

13 *The Princess* [1929] P 287, 18 Asp MLC 56.

14 *The Llanover* (1945) 79 Ll L Rep 159 at 163. See also *The Warkworth* (1884) 9 PD 145, 5 Asp MLC 326, CA; *The European* (1885) 10 PD 99, 5 Asp MLC 417; *The Merchant Prince* [1892] P 179, 7 Asp MLC 208, CA; *The Calderon* (1912) Times, 26 March; *The Louis Sheid* [1958] 1 Lloyd's Rep 606 at 615 (where there had been three previous failures of steering). Cf *Esso Petroleum Ltd v Southport Corp*n [1956] AC 218, [1955] 3 All ER 864, [1955] 2 Lloyd's Rep 655, HL. As to liability for not having hand gear ready see PARA 766; and as to the defence of inevitable accident on the ground of a failure of machinery consistent with the exercise of reasonable care and skill see PARA 818.

15 *The John Harley v The William Tell* (1865) 2 Mar LC 290. The burden of proof of good look-out on a vessel on a dark night is on those on board who allege it, and not on those who were not on board. Where a vessel which was moored complained that a second vessel was improperly moored and drifted down on her, and the defence was that the second vessel was properly moored in a gale and that there was no negligence, the burden of proof that the second vessel was properly moored lay on those who alleged it: *The John Harley v The William Tell*. Cf *The Swanland* (1855) 2 Ecc & Ad 107 (where the burden of proof as to his lights was held to lie on the plaintiff, partly because their state was a matter peculiarly within his knowledge).

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787. Rules as to proof.

The court generally follows ascertained lines in drawing conclusions as to testimony in collision cases. When the certain facts of a case, for example weather, description of vessels, courses, time, and place, which are admitted or indisputably proved, are ascertained, the doubtful facts are to be fitted in with them as far as possible¹. It is a rule in collision cases not to attribute perjury, if it is possible to avoid doing so². Although on nautical points the court is assisted by the opinion and advice of nautical assessors³ whose duty it is to be guided in matters of nautical experience by their own knowledge⁴, the court is not bound to take the advice of its nautical assessors but must make up its own mind on questions of nautical skill and seamanship⁵.

1 *The Carron* (1853) 1 Ecc & Ad 91 at 92. As to the burden of proof in collision cases see PARA 786.

2 *The Clarence* (1853) 1 Ecc & Ad 206 at 213; *The Alice and The Princess Alice* (1868) LR 2 PC 245; *The Glannibanta* (1876) 1 PD 283, sub nom *The Transit* 3 Asp MLC 233, CA; *Gannet (Owners) v Algoa (Owners)*, *The Gannet* [1900] AC 234, 9 Asp MLC 43, HL; *The Olympic and HMS Hawke* [1913] P 214 at 258, CA (affd [1915] AC 385, 12 Asp MLC 580, HL). The court does not as a rule pay great attention to evidence of conversations after a collision, devoting its consideration to testimony of the facts other than of these uncertain colloquies (*The Dundee* (1821) Times, 5 December per Lord Stowell) or admissions (*The Virgil* (1843) 2 Wm Rob 201 at 203).

3 See *The City of Berlin* [1908] P 110, 11 Asp MLC 4, CA. As to the role of assessors generally see PARA 205; as to particular questions to nautical assessors see *The Beryl* (1884) 9 PD 137 at 142, 143, 5 Asp MLC 321 at 324, CA; *The New Pelton* [1891] P 258, 7 Asp MLC 81; and as to the form of questions for assessors see *Admiralty Comrs v Ausonia (Owners)* (1920) 2 Ll L Rep 123.

4 *The Gazelle* (1842) 1 Wm Rob 471 at 474. As to how far the court should be guided by the nautical assessors, and as to decision on questions of testimony resting with the court, see *The Aid* (1881) 6 PD 84, 4 Asp MLC 432, CA (county court); *The Beryl* (1884) 9 PD 137 at 141, 5 Asp MLC 321 at 324, CA; *Gannet (Owners) v Algoa (Owners)*, *The Gannet* [1900] AC 234, 9 Asp MLC 43, HL. Assessors advising the Court of Appeal do not speak with any greater authority than those advising the court below: *The Fina Canada* [1962] 2 Lloyd's Rep 445 at 454, CA, per Willmer LJ.

5 *Australia (Owners) v Nautilus (Cargo Owners)*, *The Australia* [1927] AC 145, 17 Asp MLC 86, HL. See also *Melanie (Owners) v San Onofre (Owners)* (1919) [1927] AC 162n; *Artemisia (Owners) v Douglas (Owners)* [1927] AC 164n, HL; *The Marinegra* [1959] 2 Lloyd's Rep 65 at 76-78, CA, per Willmer LJ (a dissenting judgment) (on appeal [1960] 2 Lloyd's Rep 1, HL). See also **CIVIL PROCEDURE** vol 11 (2009) PARA 863.

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788. Negligence in construction, equipment or manning.

The simplest case of negligence on the part of an owner of a vessel causing damage by collision is negligence in constructing or equipping or manning her¹. Vessels have been held to blame for a collision owing to their not being built or equipped or loaded with reasonable care². As regards the officers of a ship, certificates are required in some cases for the master, mates, engineers and radio officers³. The number of hands required depends on circumstances. There ought to be a sufficient crew on board even in harbour to protect a ship against the ordinary incidents of peril which a competent seaman would foresee⁴.

1 As to the incidence of liability see PARA 808 et seq.

2 Eg in the case of a vessel not safely navigable owing to her improper trim (*The Argo* (1859) Sw 462), or not having a proper mast to carry her light (*The Hironnelle* (1905) 22 TLR 146, CA) or having defective steering gear (see PARA 766), although this will be excused if the defect was consistent with the exercise of all reasonable care and skill to prevent defects (see PARA 817). Where breakdowns have occurred, it is negligent to omit regular checks on equipment: *The Louis Sheid* [1958] 1 Lloyd's Rep 606 at 615. A vessel may be to blame for having too light an anchor (*The Massachusetts* (1842) 1 Wm Rob 371) or no mechanical foghorn (*The Love Bird* (1881) 6 PD 80, 4 Asp MLC 427). As to the equipment required by the rules of the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') see PARA 740 (lights); and PARA 751 (sound signals). As to the Collision Regulations 1972 generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

3 See PARA 489 et seq. As to officers and watch on look-out see PARA 768.

4 *The Excelsior* (1868) LR 2 A & E 268 at 272. As to crewing in special weather conditions see PARA 761. However, see also *Toward (Owners) v Turkistan (Owners)* (1885) 13 R 342. A vessel on a trial trip need not be officered and manned as on a voyage, but she should have a sufficient crew for the temporary purpose of navigating safely: *Clyde Navigation Co v Barclay* (1876) 1 App Cas 790 at 794, 800, 3 Asp MLC 390 at 391, 393, HL. A rowing barge in the Thames with two hands is properly manned: *The Minna* (1868) LR 2 A & E 97. As to when a crew member is required on a barge in a river see PARA 775.

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789. Negligence in navigation.

Negligence in navigation, as regards other vessels, is failure to exercise that attention and vigilance which is needed for their security¹, and which, if neglected so as to become, however unintentionally, the cause of damage to a vessel, amounts to a breach of duty, giving a right of action². In such circumstances negligence is failure to exercise reasonable care and reasonable skill³, reasonable care being sometimes more than ordinary care, and reasonable skill being possibly in an emergency less than ordinary skill⁴. Negligence in navigation includes not only failure to exercise reasonable care and reasonable skill in the usual sense, but also failure to exercise reasonable foresight⁵ and ordinary nerve⁶.

1 As to the rules contained in the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') for the purpose of preventing collisions see PARA 720 et seq (collision regulations); and PARA 758 et seq (rules of good seamanship). As to the Collision Regulations 1972 generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

2 *The Dundee* (1823) 1 Hag Adm 109 at 120. The word 'navigate' is not a concept which is restricted to steering a vessel; it incorporates the idea of navigating her in the sense of directing her course and being responsible for it: *Slater v Reed and McGrath, The Varos* [1980] 2 Lloyd's Rep 581, DC.

3 *Stoomvaart Maatschappij Nederland v Peninsular and Oriental Steam Navigation Co* (1880) 5 App Cas 876 at 891, 4 Asp MLC 360 at 365, HL. Negligence is the absence of care according to the circumstances: see *Vaughan v Taff Vale Rly Co* (1860) 5 H & N 679 at 688, Ex Ch; *Grill v General Iron Screw Collier Co* (1866) LR 1 CP 600 at 612. As to the meaning of 'reasonable care' and 'reasonable skill' see PARA 790.

4 As to the exercise of skill in sudden difficulty see PARA 791.

5 *Doward v Lindsay, The William Lindsay* (1873) LR 5 PC 338 at 343, 2 Asp MLC 118 at 120.

6 *Stoomvaart Maatschappij Nederland v Peninsular and Oriental Steam Navigation Co* (1880) 5 App Cas 876 at 888, 4 Asp MLC 360 at 364, HL (ordinary care, skill and nerve).

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790. Meaning of 'reasonable care' and 'reasonable skill'.

'Reasonable care' and 'reasonable skill' mean as a rule ordinary care and ordinary skill¹. Where the circumstances of the case are such as often occur, it is important to see whether it is or is not usual to do the thing alleged to have been neglected, for example to have a man in charge of a barge in dock². The degree of care required, however, varies according to the circumstances, and more than ordinary care is sometimes required. For example, there is a duty to take special precautions when using a delicate instrument³.

'Ordinary skill' means the skill which would ordinarily be shown by a seaman of competent skill and experience in the circumstances⁴. Failure to do the very best thing, or to show extraordinary skill or presence of mind, does not create a right of action⁵.

1 Negligence is thus usually described as failure to exercise ordinary care and skill. As to the standard of care in negligence generally see **NEGLIGENCE** vol 78 (2010) PARAS 21-23.

2 *The Western Belle* (1906) 10 Asp MLC 279. The fact that the act complained of is usually done is, however, by no means conclusive disproof of negligence: see *The Scotia* (1890) 6 Asp MLC 541. As to whether it is negligence not to have a man in charge of a barge in dock see PARA 775.

3 *The Turret Court* (1900) 69 LJP 117 (where it was held that a master using steam steering gear ought to have had the hand gear ready).

4 *Inman v Reck, The City of Antwerp and The Friedrich* (1868) LR 2 PC 25 at 34. As to the exercise of a particular skill see **NEGLIGENCE** vol 78 (2010) PARA 23.

5 See *Stoomvaart Maatschappij Nederland v Peninsular and Oriental Steam Navigation Co* (1880) 5 App Cas 876 at 888, 4 Asp MLC 360 at 365, HL. See also *The Bywell Castle* (1879) 4 PD 219 at 227, 4 Asp MLC 207 at 211, CA. As to the exercise of skill in sudden difficulty see PARA 791.

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791. Degree of skill required in sudden difficulty.

When one vessel by a wrongful act suddenly puts another in a difficulty, the same amount of skill is not to be expected from the other vessel as in other circumstances¹. In such a case, a mistake by the other vessel in the agony of collision is not to be held to have in any way caused it². It is not enough in such circumstances to show an act or omission by the officer in charge of the other vessel by reason of which the collision actually occurred³. His conduct is entitled to favourable consideration⁴.

A person may not do the right thing, and may even do the wrong thing, and yet not be guilty of neglect of his duty, which is not absolutely to do right at all events, but only to take reasonable care and use reasonable skill⁵. When a person is suddenly and without warning thrown into a critical position, due allowance must be made for this, but not too much⁶.

So, when a sudden change of circumstances takes place which brings one of the rules contained in the International Regulations for Preventing Collisions at Sea 1972⁷ into operation, even though the thing prescribed is not done by the person in charge, yet the rule can hardly be said to be infringed by him until he knows or ought to have known of the change of circumstances⁸. The officer in charge of a vessel placed suddenly in a difficulty by the fault of another vessel must have time (although it may be a very short time) for thought⁹. When vessels have to manoeuvre for one another, and one hails the other to alter her wheel, it appears that she cannot complain of the alteration¹⁰; or, if the hail is not to alter the wheel, it becomes the duty of the hailing vessel, even if not so before, to take action to avoid the other vessel¹¹.

1 *The Bywell Castle* (1879) 4 PD 219, 4 Asp MLC 207, CA. See also *Admiralty (HMS P31) v Bretagne* (1921) 7 Ll L Rep 127.

2 *The Nor* (1874) 2 Asp MLC 264 at 266, PC; *The Fagerstrand* (1929) 33 Ll L Rep 67.

3 *The Sisters* (1876) 1 PD 117 at 120, 3 Asp MLC 122 at 124, CA. See also *The Elizabeth*, *The Adalia* (1870) 22 LT 74 (where a schooner following up river a steamer which suddenly grounded was held not to blame for not dropping her anchor, although it was a proper thing to do); *The CM Palmer*, *The Larnax* (1873) 2 Asp MLC 94, PC (where the master of a vessel in a sudden emergency was held not to blame because it did not occur to him to let go his anchor, even supposing it would have averted the collision). When, however, a ship of 2,256 tons gross, laden with iron ore, lay at anchor to a single anchor in the Downs, she was held liable for a collision after she had been broken adrift by another vessel for failing to let go her second anchor and for not having her second anchor so placed that it could be let go at once: *The Jessie and The Zaanland* [1917] P 138, 14 Asp MLC 139. As to coming to anchor and precautions while at anchor see PARAS 763, 764; and as to the incidence of liability see PARA 808 et seq.

4 *Mary Tug Co v British India Steam Navigation Co, The Meanatchy* [1897] AC 351 at 357, PC.

5 *Stoomvaart Maatschappij Nederland v Peninsular and Oriental Steam Navigation Co* (1880) 5 App Cas 876 at 891, 4 Asp MLC 360 at 365, HL. As to the meaning of 'reasonable care' and 'reasonable skill' see PARA 790.

6 As to the standard of care in an emergency see **NEGLIGENCE** vol 78 (2010) PARA 21.

7 I.e. the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') (as to which see PARA 720 et seq). As to the Collision Regulations 1972 generally see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which, together with the rules of the Collision Regulations 1972 referred to in it, form

an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

8 *Stoomvaart Maatschappij Nederland v Peninsular and Oriental Steam Navigation Co* (1880) 5 App Cas 876 at 894, 4 Asp MLC 360 at 366, HL.

9 *The Emmy Haase* (1884) 9 PD 81, 5 Asp MLC 216; *Kwang Tung (Owner) v Ngapoota (Owners)*, *The Ngapoota* [1897] AC 391, PC; *Hoek van Holland Maatschappij v Clyde Shipping Co* (1902) 5 F 227; and see *United States Shipping Board v Laird Line Ltd* [1924] AC 286, 16 Asp MLC 302, HL; cf PARA 736.

10 Cf *The James Watt* (1844) 2 Wm Rob 270 at 275. Blame may be attached to a vessel which wrongly hails another vessel to alter her wheel: *Maddox v Fisher, The Independence* (1861) 14 Moo PCC 103 at 109.

11 *The Carolus* (1837) 3 Hag Adm 343n. As to rules under the Collision Regulations 1972 regarding action taken to avoid collision see PARA 727.

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792. Collateral negligence immaterial.

It is not necessarily negligent to risk doing damage to another vessel intentionally. Thus, persons have been held justified in risking damage to one vessel by launching another, in order to avoid the more serious risk to life and property by postponement¹. Moreover, the breach of duty must be connected with the damage as cause and effect to afford the right of action². For example, even though a vessel lying at a pontoon is a trespasser, her owners will not be liable for damage done by her to the pontoon owing to another vessel wrongly striking her³. The nature of the accident and what the neglect is should be looked at, and it must be proved⁴ that the actual transgression was to some extent the cause of the accident, for, even if blame is attributable to an act, one must guard against assuming that it was, therefore, the cause of the accident⁵, and not merely collateral negligence. The defendant is, however, responsible for the reasonably foreseeable consequences of his negligence⁶, both on the navigation of his own vessel and of other vessels⁷.

1 *Frances (Owners) v Highland Loch (Owners), The Highland Loch* [1912] AC 312, 12 Asp MLC 106, HL (where the master of the vessel damaged had received warning of the launch but had failed to move his vessel out of the way) (see PARA 760).

2 As to establishing the cause of action see PARA 785.

3 *The Titan, The Rambler* (1906) 10 Asp MLC 350.

4 As to the burden of proof see PARA 786.

5 *Cayzer, Irvine & Co, SS Clan Sinclair (Owners) v Carron Co, SS Margaret (Owners)* (1884) 9 App Cas 873 at 881, 882, 5 Asp MLC 371 at 373, HL.

6 As to foreseeability of damage as the test of liability see **DAMAGES** vol 12(1) (Reissue) PARAS 856, 857.

7 *Romney Marsh (Bailiffs) v Trinity House* (1870) LR 5 Exch 204 (affd (1872) LR 7 Exch 247, Ex Ch); *The City of Lincoln* (1889) 15 PD 15, 6 Asp MLC 475, CA (where the defendants were liable for the grounding of a vessel due to the loss of charts etc in a collision caused by the defendants); *The Gertor* (1894) 7 Asp MLC 472 at 473 (where the defendants, through not taking a tug in a gale, were held liable for the cost of the subsequent damage done by their vessel); *The Port Victoria* [1902] P 25, 9 Asp MLC 314 (where it was held that a steamship driven to slip her cable to avoid a collision could recover the loss); *The Jessie and The Zaanland* [1917] P 138, 14 Asp MLC 139 (cited in PARA 791 note 3). Cf *The Douglas* (1882) 7 PD 151, 5 Asp MLC 15, CA (where there was a collision with the wreck of a vessel sunk by collision and unlighted without fault of the owners; the fact that the wreck had been sunk through the negligence of the owners' employees did not render them liable in respect of the collision); *The Manorbier Castle* (1922) 15 Ll L Rep 164 (where a negligently lighted wreck was run into by a steamer the pilot of which knew the position of the wreck, and the steamer was found alone to blame). As to liability for collision with wrecks see PARA 816. Reasonable but mistaken conduct of another person may be a consequence for which the defendant is liable: *The Oropesa* [1943] P 32, [1943] 1 All ER 211, CA (launching of boat in rough weather by master of damaged vessel); *Thomas Stone Shipping Ltd v The Admiralty, The Albion* [1952] 1 Lloyd's Rep 38 at 62, 63 (damage through improper use of engines by vessel after collision) (on appeal [1953] P 117, [1953] 1 All ER 978, [1953] 1 Lloyd's Rep 239, CA); *Temple Bar (Owners) v Guildford (Owners), The Guildford* [1956] P 364, [1956] 2 All ER 915, [1956] 2 Lloyd's Rep 74 (refusal of offer to tow). The defendant may also be liable for damage suffered by a third person in seeking, in accordance with a statutory duty, to render assistance to those on board a vessel in danger of sinking through the negligence of those in charge of the defendants' vessel: *The Gusty and The Daniel M* [1940] P 159, 19 Asp MLC 366; cf *The San Onofre* [1922] P 243, 16 Asp MLC 1, CA. As to statutory duties to render assistance see PARAS 448, 756; and as to the effect upon liability for negligence of intervening action by the claimant or a third party see generally **DAMAGES** vol 12(1) (Reissue) PARAS 856, 857.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/8. AVOIDANCE OF COLLISIONS/(5) NEGLIGENCE CAUSING DAMAGE; FAULT/(i) Negligence Causing Damage/793. Care and skill afloat and ashore.

793. Care and skill afloat and ashore.

There is no difference between the rules of the Court of Admiralty and the rules of courts of common law as to what amounts to negligence causing damage by collision¹, but there are differences in the application of the rules because of the distinction between ships and land vehicles in their power to stop and manoeuvre and the distance over which a look-out must be kept².

1 As to establishing the cause of action see PARA 785; and as to the burden of proof see PARA 786. As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq.

2 *Cayzer, Irvine & Co, SS Clan Sinclair (Owners) v Carron Co, SS Margaret (Owners)* (1884) 9 App Cas 873 at 882, 5 Asp MLC 371 at 373, HL. As to liability for negligence see generally **NEGLIGENCE** vol 78 (2010) PARA 1 et seq; and as to keeping a look-out see PARA 768.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/8. AVOIDANCE OF COLLISIONS/(5) NEGLIGENCE CAUSING DAMAGE; FAULT/(i) Negligence Causing Damage/794. Damage other than to a ship.

794. Damage other than to a ship.

In addition to the ordinary case of collision between two vessels¹, there are cases of negligence or fault on the part of an owner of a vessel or his employees² causing damage by the vessel colliding with, or some part of it striking, property other than a vessel, for example a pier³, or a person who is not on board a vessel⁴.

1 As to the prevention of collisions see PARA 720 et seq (ie under the International Regulations for Preventing Collisions at Sea 1972); and PARA 758 et seq (common law cases reflecting customary rules of good seamanship).

2 As to the incidence of liability see PARA 808 et seq.

3 See eg *The Excelsior* (1868) LR 2 A & E 268 (damage to pier); *The Swift* [1901] P 168, 9 Asp MLC 244 (damage to oyster beds). Cf *The Albert Edward* (1875) 44 LJ Adm 49 (where a vessel was held not liable for damage to a mooring dolphin as it ought to have been stronger); *The Bien* [1911] P 40, 11 Asp MLC 558 (where river conservators, and not the owner of a vessel, were liable for damage where a wrecked vessel was placed by the order of the conservators' harbour master on an oyster bed); *The Oxford v The James and Ann* (1922) 10 Ll L Rep 119 (where the master was ignorant of the existence of a ferry cable, and so was not negligent). As to liability for damage caused by a vessel acting under the orders of a harbour master see PARA 814; and as to the circumstances in which a vessel may ground in a fishery see *Colchester Corp v Brooke* (1845) 7 QB 339; and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARAS 792, 793. As to liability for damage to works under the Harbours, Docks, and Piers Clauses Act 1847, and as to the remedy for such damage, see ss 74, 75; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 754. Although damage caused by a ship striking an object other than a ship is not damage by collision (see PARA 715), the Admiralty jurisdiction of the High Court and the existing Admiralty jurisdiction of the county court extend to damage caused to or by ships on their striking things other than ships: see the Supreme Court Act 1981 s 20(2)(d), (e) (see PARA 110); *The Uhla* (1867) 3 Mar LC 148 (breakwater); *Mersey Docks and Harbour Board v Turner*, *The Zeta* [1893] AC 468, 7 Asp MLC 369, HL (pier); *The Swift* [1901] P 168, 9 Asp MLC 244 (oyster beds). As to the power to enforce a claim against a ship in rem see *The Swift*; the Supreme Court Act 1981 s 21(3); and PARA 93. As to Admiralty jurisdiction generally see PARA 85 et seq; and as to damage by a ship to foreign land see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 392.

4 See *The Sylph* (1867) LR 2 A & E 24 (injury to diver). As to claims for personal injuries see PARA 806.

UPDATE

794 Damage other than to a ship

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/8. AVOIDANCE OF COLLISIONS/(5) NEGLIGENCE CAUSING DAMAGE; FAULT/(i) Negligence Causing Damage/795. Damage to another vessel without collision.

795. Damage to another vessel without collision.

There are cases where, by the fault of those in charge of a vessel, damage is done to another vessel without coming into collision with her, as, for example by causing a collision between her and a third vessel¹, or compelling her to go out of the fairway and run aground², or negligently dragging down on her so as to compel her to slip her anchor and chain and put to sea to avoid collision³.

1 *The Sisters* (1876) 1 PD 117, 3 Asp MLC 122, CA. A defendant is liable for the reasonably foreseeable consequences of his negligence: see PARA 792.

2 *The Industrie* (1871) LR 3 A & E 303, 1 Asp MLC 17. See also *Owners of Bow Spring v Owners of Manzanillo II* [2004] EWCA Civ 1007, [2005] 1 All ER (Comm) 53n, [2005] 1 WLR 144, [2005] 1 Lloyd's Rep 1 (tanker deliberately beached herself just outside the northern by-pass channel of the Suez Canal to avoid risk of collision with dredger but the decision to beach was held to be a hurried and ill-considered over-reaction and the tanker was judged 50% to blame for any damage incurred to itself). As to the meaning of 'fairway' see PARA 728 note 4.

3 *The Port Victoria* [1902] P 25, 9 Asp MLC 314. As to a power-driven vessel damaging other craft by her wash see PARA 770.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/8. AVOIDANCE OF COLLISIONS/(5) NEGLIGENCE CAUSING DAMAGE; FAULT/(ii) Determination of Liability when Both Parties at Fault/796. Principles of liability.

(ii) Determination of Liability when Both Parties at Fault

796. Principles of liability.

When there is fault or negligence attributable to the owners of both vessels concerned in a collision¹:

- 1024 (1) if one party's fault has not even partly caused the damage² by collision, then, if he is the claimant, he can recover in full for the damage to his vessel caused by the other party, and, if he is the defendant, he is not liable for the damage to the other vessel³;
- 1025 (2) if the fault of each party has partly caused⁴ the damage by the collision, both vessels are to blame, and each party is liable to make good the damage of the other party in proportion to the degree in which his vessel was in fault⁵;
- 1026 (3) if one party's fault has solely caused the damage by collision, then, if he is the claimant, he cannot recover for the damage to his vessel and, if he is the defendant, he is liable for the whole of the damage to the other vessel⁶.

1 The principles stated in the text apply mutatis mutandis where more than two vessels are concerned: cf PARA 803. As to the incidence of liability see PARA 808 et seq.

2 Negligence which renders a party liable as defendant (or affects his right to recover in full if claimant) is sometimes referred to as negligence which 'directly causes' or 'directly contributes' to the damage: see eg *Tuff v Warman* (1857) 2 CBNS 740 at 743; *The Bernina (2)* (1887) 12 PD 58 at 61-63, 6 Asp MLC 75 at 77, 78, CA. As to the necessity for causation see PARA 792.

3 See *The Woodrop-Sims* (1815) 2 Dods 83 at 85 (approved in *Hay v Le Neve* (1824) 2 Sh Sc App 395, HL); *Spaight v Tedcastle* (1881) 6 App Cas 217 at 219, 4 Asp MLC 406 at 407, HL; *Cayzer, Irvine & Co, SS Clan Sinclair (Owners) v Carron Co, SS Margaret (Owners)* (1884) 9 App Cas 873 at 880, 881, 5 Asp MLC 371 at 373, HL. As to the measure of damages see PARA 822 et seq.

4 It is possible that each party may be negligent, and yet that the acts of negligence may be too trivial or indirect to be held to be a cause of the damage, which will then, so far as these parties are concerned, be an inevitable accident: see PARAS 817, 818.

5 See the Merchant Shipping Act 1995 s 187; and PARA 1060 et seq. As to the liability to make good the damage when more than two vessels have been at fault see PARA 803.

6 See *Cayzer, Irvine & Co, SS Clan Sinclair (Owners) v Carron Co, SS Margaret (Owners)* (1884) 9 App Cas 873 at 881, 5 Asp MLC 371 at 373, HL. See also *The Woodrop-Sims* (1815) 2 Dod 83 at 85 (approved in *Hay v Le Neve* (1824) 2 Sh Sc App 395, HL).

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797. Negligence causing damage.

Whether one or more negligent acts have caused or partly caused certain damage by collision is generally not a question of law but a question of fact¹. Thus, when the particular events have been ascertained, the conclusion that the act was or was not the cause or part cause of the damage should be drawn according to the general good sense of ordinary persons².

1 See *Cayzer, Irvine & Co, SS Clan Sinclair (Owners) v Carron Co, SS Margaret (Owners)* (1884) 9 App Cas 873 at 881, 5 Asp MLC 371 at 373, HL. As to causation in tort generally see **DAMAGES** vol 12(1) (Reissue) PARA 854; and as to the burden of proof in collision cases see PARA 786.

2 See *Hero (Owners) v Admiralty Comrs* [1912] AC 300 at 304, 12 Asp MLC 108 at 109, HL (the negligence of one vessel 'in the ordinary plain common sense of the business' contributed to the damage by collision). See also *Admiralty Comrs v SS Volute* [1922] 1 AC 129 at 144, 15 Asp MLC 530 at 537, HL. As to the assistance given to the court by nautical assessors see PARA 787.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/8. AVOIDANCE OF COLLISIONS/(5) NEGLIGENCE CAUSING DAMAGE; FAULT/(ii) Determination of Liability when Both Parties at Fault/798. Simultaneous negligence.

798. Simultaneous negligence.

Where both vessels have been simultaneously negligent at or up to the last moment before the collision, the usual question is whether the act of negligence on each side was in itself so substantial¹ and so related² to the damage by the collision as to amount to a cause of it³. When both vessels have thus been simultaneously negligent at or up to the last moment, and when the negligent act of each is substantial and directly related to the collision damage, each vessel is held to have partly caused the damage, and the judgment is that both are to blame⁴.

1 See *The Argo* (1900) 9 Asp MLC 74, CA.

2 See *Fanny M Carvill (Owners) v Peru (Owners)*, *The Fanny M Carvill* (1875) 13 App Cas 455n, 2 Asp MLC 565, PC.

3 As to the test of foreseeability of damage see **DAMAGES** vol 12(1) (Reissue) PARA 851 et seq; and as to establishing the cause of action see PARA 785.

4 See eg *The United States* (1865) 12 LT 33, PC (cited in PARA 760 note 7); *The Agra and The Elizabeth Jenkins* (1867) LR 1 PC 501 (failure of one sailing vessel to keep out of the way and of the other to keep her course); *The Roslie* (1880) 5 PD 245, 4 Asp MLC 384 (failure of one sailing vessel to keep out of way and of the other to take action to avoid imminent collision); *The Margaret* (1881) 6 PD 76, 4 Asp MLC 375, CA (moored vessel partly to blame for collision damage because her anchor was improperly projecting at night) (cited in PARA 762). Cf *The Monte Rosa* [1893] P 23, 7 Asp MLC 326 (where the collision was in daylight (see PARA 799 note 7)). See also *The Scotia* (1890) 6 Asp MLC 541; *The Dunstanborough* [1892] P 363n; *The Clutha Boat 147* [1909] P 36, 11 Asp MLC 199 (vessel at anchor in fog to blame for not sounding fog signal; other vessel at fault for being underway and going too fast); *The Frankfort* [1910] P 50, 11 Asp MLC 326, CA (collision in river; excessive speed by one vessel and wrong manoeuvre and failure to signal on part of other); and see *Stanton v Redriff* (1921) 6 Ll L Rep 348; *The Eurymedon* [1938] P 41, [1938] 1 All ER 122, 59 Ll L Rep 214, CA (vessel anchored in improper position athwart fairway; other vessel negligent in failing to appreciate that lights seen were anchor lights); *Boy Andrew (Owners) v St Rognvald (Owners)* [1948] AC 140, [1947] 2 All ER 350, 80 Ll L Rep 559, HL (simultaneous faulty navigation of overtaking and overtaken vessel); *Cunard White Star Line Ltd v Admiralty Comrs, The Queen Mary* [1949] WN 75, 82 Ll L Rep 303, HL (negligence of escorted vessel and escort); *The Hurst* [1952] 1 Lloyd's Rep 96 (barge adrift unattended; attempt to pass between barge and other vessels). As to the principles of liability where two parties are at fault see PARA 796 et seq; and as to the division of loss where both are at fault see PARA 800 et seq.

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799. Antecedent and subsequent negligence.

Where, as in a large number of collisions at sea¹, one vessel has been negligent at the last moment before collision and the other vessel's negligence has taken place before that, the decision as to whether each act was or was not a cause of the collision is more difficult².

It must be considered how far the subsequent act should be treated as connected with or independent of the antecedent act, and the importance of each has to be contrasted in connection with the resulting damage³. Where a clear line can be drawn, the subsequent negligence is the only one to look to⁴. If one party has actually observed the negligence of the other party or could by reasonable care have become aware of it, and could by reasonable care⁵ have avoided causing damage, he is solely responsible for the damage⁶. It is a question of fact in each case whether the negligence of the initial wrongdoer could have been avoided by the other party⁷.

There may, however, be cases where the two acts of negligence come so closely together, and the second act is so much mixed up with the state of things brought about by the first act, that the party secondly negligent, while not held free from blame, may invoke the prior negligence as being part of the cause of the collision so as to make it a case of contribution⁸; and there may be cases where the collision was caused wholly by the antecedent negligence, the subsequent negligence being then too slight a factor to be reckoned as a cause⁹.

1 *Stoomvaart Maatschappij Nederland v Peninsular and Oriental Steam Navigation Co* (1880) 5 App Cas 876 at 903, 4 Asp MLC 360 at 367, HL. As to the prevention of collisions see PARA 720 et seq (ie under the International Regulations for Preventing Collisions at Sea 1972); and PARA 758 et seq (common law cases reflecting customary rules of good seamanship).

2 As to the burden of proof in collision cases see PARA 786.

3 When there has been antecedent and subsequent negligence, it will not be sufficient, in order to prove that the other party partly caused the damage, to show that, if he in some earlier stage of navigation had done something which he ought to have done, a different situation would have resulted: see *Spaight v Tedcastle* (1881) 6 App Cas 217 at 219, 4 Asp MLC 406 at 407, HL, per Lord Selborne LC.

4 *Admiralty Comrs v SS Volute (Owners)* [1922] 1 AC 129 at 144, 15 Asp MLC 530 at 537, HL. See also eg *Spaight v Tedcastle* (1881) 6 App Cas 217, 4 Asp MLC 406, HL (negligence by tow and subsequent negligence by tug); *The Hornet* [1892] P 361, 7 Asp MLC 262 (where the absence of the person in charge of a moored barge did not contribute to the collision); *The Kate* (1936) 54 Ll L Rep 120 at 124 (where a moored barge obstructed a lock entrance, but was plainly visible to a steamer which got underway in the lock and ran into the barge); *The Arabert* [1959] 1 Lloyd's Rep 63, CA (where a vessel engaged in turning in a river was run into by another). In such a case the party held responsible is said to have been subsequently and severably negligent: *Admiralty Comrs v SS Volute* at 136 and at 535; and see **DAMAGES** vol 12(1) (Reissue) PARA 856.

5 As to the meaning of 'reasonable care' and 'reasonable skill' see PARA 790.

6 *The Eurymedon* [1938] P 41 at 49, 50, [1938] 1 All ER 122 at 126, 59 Ll L Rep 214 at 217, CA. See also *Dowell v General Steam Navigation Co* (1855) 5 E & B 195 at 206; *Tuff v Warman* (1858) 5 CBNS 573 at 585; *Spaight v Tedcastle* (1881) 6 App Cas 217 at 226, 4 Asp MLC 406 at 409, HL; *Cayzer, Irvine & Co, SS Clan Sinclair (Owners) v Carron Co, SS Margaret (Owners)* (1884) 9 App Cas 873 at 887, 5 Asp MLC 371 at 375, HL; *The Bernina (2)* (1887) 12 PD 58 at 61, 62, 6 Asp MLC 75 at 77, CA.

7 *The Hero* [1911] P 128 at 151, 12 Asp MLC 10 at 17, 18, CA. See eg *Kryisia Maritime Inc v Intership Ltd* [2008] EWHC 1523 (Admty), [2008] All ER (D) 08 (Jul) (rope attached to fender that was free in the water was a hazard or danger to all vessels approaching the barge but it had been unseamanlike for the master of the other

vessel to manoeuvre so that there was a danger that his vessel might have hit the side of the barge; 30% liability attributed to claimant).

For instances in which the person subsequently negligent was held wholly responsible for the damage see *Cayzer, Irvine & Co SS Clan Sinclair (Owners) v Carron Co, SS Margaret (Owners)* (1884) 9 App Cas 873, 5 Asp MLC 371, HL (where a steamship negligently failed to wait before rounding the point of a river and a second steamship was subsequently negligent by trying recklessly to run between the first-mentioned steamship and a third vessel when there was insufficient room). Cf *The Ovingdean Grange* [1902] P 208, 9 Asp MLC 295, CA (cited in note 8); *The Monte Rosa* [1893] P 23, 7 Asp MLC 326 (where a tug which in daylight by negligent navigation came into collision with a steamer and suffered damage from the steamer's anchor which was improperly projecting was held solely to blame); contrast *The Margaret* (1881) 6 PD 76, 4 Asp MLC 375, CA; *Carse v North British Steam Packet Co* (1895) 22 R 475 (where a steamer ran down a boat moored in an improper place); *The Winstanley* [1896] P 297, 8 Asp MLC 170, CA (where a steamer on her wrong side of a channel collided with a steamer which had regained her right side); *HMS Sans Pareil* [1900] P 267, 9 Asp MLC 78, CA (where a tug and tow improperly attempted to cross ahead of a squadron of warships, but a warship could by ordinary diligence have avoided collision and was solely responsible for it: for comment on this decision see *Admiralty Comrs v SS Volute* [1922] 1 AC 129 at 141, 15 Asp MLC 530 at 536, HL); *Memnon v Paulsboro* (1920) 5 Ll L Rep 250, CA (where one vessel had been going at excessive speed in fog but had stopped and reversed on hearing another vessel's fog whistle, and the other vessel alone was to blame for the collision); *The Manorbier Castle* (1922) 15 Ll L Rep 164 (where a vessel which collided with a wreck was solely to blame, although wreck-marking lights were negligently displayed); *Anglo-Newfoundland Development Co Ltd v Pacific Steam Navigation Co* [1924] AC 406, 16 Asp MLC 385, HL (where a vessel was solely to blame where she held her course and attempted to pass another vessel after a warning that the river was blocked by the other vessel). See also note 4.

8 *Admiralty Comrs v SS Volute* [1922] 1 AC 129 at 144, 15 Asp MLC 530 at 537. See also *Hay v Le Neve* (1824) 2 Sh Sc App 395 (vessel at anchor with no light; other vessel ought to have had a better look-out and so avoided her; both vessels partly caused collision); *The Ovingdean Grange* [1902] P 208, 9 Asp MLC 295, CA (manoeuvring in river; second vessel, by failing to stop before rounding point, placed first vessel in difficulty; first vessel, through failure in look-out, collided with second; both vessels to blame; cf *Cayzer, Irvine & Co, SS Clan Sinclair (Owners) v Carron Co, SS Margaret (Owners)* (1884) 9 App Cas 873, 5 Asp MLC 371, HL); *The Hero (Owners) v Admiralty Comrs* [1912] AC 300, 12 Asp MLC 108, HL (where there was a collision between a merchant vessel and one of a flotilla of warships, and it was held that the collision was partly caused by the merchant vessel's negligence in steering across the warships' course and partly by the subsequent manoeuvres of the warship with which she collided); *The Sedulity* [1956] 1 Lloyd's Rep 510 (one vessel left at anchor exhibiting misleading light and in charge of inexperienced person although she had tendency to sheer; approaching vessel thereby embarrassed, but, if she had kept good look-out, would have realised nature of light and that first vessel was sheering). Cf *The Eurymedon* [1938] P 41, [1938] 1 All ER 122, 59 Ll L Rep 214, CA (where the negligence of both parties was held to have continued up to the time of the collision). As to the duty of a vessel underway to avoid a collision with a vessel at anchor see PARA 765; and as to the division of loss in proportion to fault see PARA 800 et seq.

9 See eg *The Bywell Castle* (1879) 4 PD 219 at 222, 223, 227, 228, 4 Asp MLC 207 at 209, 210, 211, 212, CA; cf *Stoomvaart Maatschappij Nederland v Peninsular and Oriental Steam Navigation Co* (1880) 5 App Cas 876 at 888, 889, 4 Asp MLC 360 at 364, HL. As to the position where one vessel by a wrongful act puts another in a position of difficulty see PARA 791. Where a wharfinger had a mast projecting from his wharf over a river and the bowsprit of a vessel at an adjoining wharf descended on the mast with the falling tide and damaged it, the wharfinger was held not to be entitled to recover damages: *Dalton v Denton* (1857) 1 CBNS 672. In cases where the antecedent negligence is held to have caused the damage, it is sometimes referred to as the 'causa causans' or 'real cause': see *Lloyd v General Iron Screw Collier Co* (1864) 3 H & C 284 at 291, although in that case an antecedent act which was an efficient cause in the ordinary sense was compared with a subsequent natural event which was not strictly an efficient cause because it lacked the element of human responsibility. See also *Chartered Mercantile Bank of India v Netherlands India Steam Navigation Co* (1883) 10 QBD 521 at 531, 5 Asp MLC 65 at 67-68, CA.

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(iii) Rule of Division of Loss in Proportion to Fault

800. Rule as to division of loss.

Where, by the fault¹ of two or more ships², damage or loss is caused to one or more of those ships, to their cargoes or freight³ or to any property on board, the liability⁴ to make good the damage or loss is in proportion to the degree in which each ship was in fault⁵. If, in any such case, having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability must be apportioned equally⁶.

Nothing in the above provisions:

- 1027 (1) operates so as to render any ship liable for any loss or damage to which the fault of the ship has not contributed⁷;
- 1028 (2) affects the liability of any person under a contract of carriage⁸ or any contract, or is to be construed as imposing any liability upon any person from which he is exempted by any contract or any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law⁹.

1 The fact that the owners of one ship do not allege any fault against the other is immaterial if the court finds on the evidence that the fault existed: *The Mimosa* [1944] WN 74. As to the determination of liability see PARAS 796-799.

2 As to the meaning of 'ship' see PARA 229.

3 For these purposes, 'freight' includes passage money and hire: Merchant Shipping Act 1995 s 187(6).

4 The Merchant Shipping Act 1995 s 187 applies to persons other than the owners of a ship who are responsible for the fault of the ships, as well as to the owners of a ship; and, where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, s 187 applies to the charterers or other persons for the time being so responsible instead of the owners: s 187(3).

5 Merchant Shipping Act 1995 s 187(1).

'Damage' and 'loss' include the plural, and liability for different heads of damage arising from the same event may be apportioned on different bases: *Carlsholm (Owners) v Calliope (Owners)*, *The Calliope* [1970] P 172 at 182, [1970] 1 All ER 624 at 638, [1970] 1 Lloyd's Rep 84 at 99 per Brandon J. References to damage or loss caused by the fault of a ship include references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages: Merchant Shipping Act 1995 s 187(7). As to other expenses which are recoverable see *The Napier Star* [1939] P 330, 64 Ll L Rep 197 (costs in defending claims for loss of life and personal injuries); and see PARA 828 et seq. The Merchant Shipping Act 1995 s 187 is not confined to damage by collision: cf *The Batavier III* (1925) 134 LT 155, 16 Asp MLC 563 (damage by swell caused by excessive speed). The Merchant Shipping Act 1995 s 187 has, however, no application to a case in which a vessel strikes and damages a structure on land: cf *Gartland Steamship Co and Lablanc v R* [1960] 1 Lloyd's Rep 388 (Can SC); and see *The Rockabill* [1937] P 93, [1937] 1 All ER 191, 56 Ll L Rep 149, CA. As to rights of cargo owners and passengers see PARA 805. As to liability for damage done to harbours see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 754.

The words 'in which each ship was in fault' must be construed as meaning 'in which each ship was at fault, causing or contributing to the collision': *The Peter Benoit* (1915) 84 LJP 87, CA (affd 13 Asp MLC 203, 114 LT 147, HL); *SS Haugland (Owners) v SS Karamea (Owners)* [1922] 1 AC 68 at 71, 15 Asp MLC 430 at 431, HL; *Miraflores (Owners) v George Livanos (Owners)* [1967] 1 AC 826, [1967] 1 All ER 672, [1967] 1 Lloyd's Rep 191, HL (where a collision between two ships partly caused the grounding of a third, and the liability of each vessel

had to be assessed by comparison of her fault with the fault of each of the other vessels considered separately); *The Eglantine, Credo and Inez* [1990] 2 Lloyd's Rep 390, CA.

There is, however, no rule or principle, applicable to collision cases or analogous types of case in the Admiralty Court where there was no counterclaim (see PARA 204 note 16), that a claimant who was at fault under the Merchant Shipping Act 1995 s 187(1), (2) should recover its costs in proportion to the liability to the defendant: *Krysia Maritime Inc v Intership Ltd* [2008] EWHC 1880 (Admlty), [2008] All ER (D) 12 (Aug). As to costs in Admiralty proceedings generally see PARA 204; and as to the time limit for proceedings to enforce a claim or lien against a ship or her owners in respect of damage or loss caused see PARA 841.

6 Merchant Shipping Act 1995 s 187(2). See *The Anneliese, Arietta S Livanos (Owners) v Anneliese (Owners)* [1970] 2 All ER 29n, [1970] 1 Lloyd's Rep 355, CA. See also *The Kaiser Wilhelm II* (1915) as reported in 31 TLR 615, CA (where damage was apportioned equally, and it was ordered that, as one of the ships concerned was owned by enemy aliens, no payment was to be made under the judgment until the end of the war or until further order). The appellate court will not lightly interfere with the judge below on the apportionment of liability unless it disagrees with him on the facts: *The Peter Benoit* (1915) 13 Asp MLC 203, 114 LT 147, HL; *The Karamea* [1921] P 76, 15 Asp MLC 318 (affd sub nom *SS Haugland (Owners) v SS Karamea (Owners)* [1922] 1 AC 68, 15 Asp MLC 430); *The Clara Camus* (1925) 134 LT 50, 16 Asp MLC 570, CA (on appeal (1926) 136 LT 291, 17 Asp MLC 171, HL); *Kitano Maru (Owners) v Otranto (Owners)*, *The Otranto* [1931] AC 194 at 204, 18 Asp MLC 193 at 196, HL; *The Umtali* (1938) 62 Ll L Rep 195, HL; *British Fame (Owners) v Macgregor (Owners)*, *The Macgregor* [1943] AC 197, [1943] 1 All ER 33, 74 Ll L Rep 82, HL (not approving on this point *The Testbank* [1942] P 75, sub nom *The Ceramic (Owners) v The Testbank (Owners)* [1942] 1 All ER 281, CA); *The Lucile Bloomfield, Ronda (Owners) v SS Lucile Bloomfield (Owners)* [1967] 2 All ER 633n, [1967] 1 WLR 697n, [1967] 1 Lloyd's Rep 341, CA; *The Toni* [1974] 1 Lloyd's Rep 489, CA; *Thuroklint (Owners) v Königin Juliana (Owners)*, *The Königin Juliana* [1975] 2 Lloyd's Rep 111, HL; *The Djerada* [1976] 2 Lloyd's Rep 40, CA. See also note 5. As to Admiralty appeals generally see PARA 218 et seq.

7 Merchant Shipping Act 1995 s 187(4).

8 See PARA 805.

9 Merchant Shipping Act 1995 s 187(5). As to limitation of liability see PARAS 796, 1042 et seq.

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801. Working out of division of loss between shipowners.

In working out the division of loss under the statutory provision regarding apportionment of liability¹, all the damages caused to the owner² of each ship which he has to share with the owner of the other ship have first to be ascertained³.

When the divisible damages of the first owner have been thus ascertained, the liability of the second owner to make good his proportion of these first damages is only a provisional liability according to established principles, and it is not a debt due from him to the first owner⁴. The divisible damages of the second owner must also be ascertained. Then the proportion of the first damages due from the second owner has to be set against the proportion of the second damages due from the first owner, and the smaller sum has to be deducted from the larger, and the balance is a debt due from one owner to the other. There is only one liability, and there can be only one payment⁵. Thus, in the simple case of both ships being found equally to blame, the owner who has suffered the greater damages is entitled to receive from the second owner half those damages, less half the damages which the second owner has sustained⁶.

1 le the Merchant Shipping Act 1995 s 187 (see PARA 800). As to the determination of liability see PARA 796 et seq.

2 As to the meaning of 'owner' for these purposes see PARA 800 note 4.

3 As to the mode of ascertainment see PARA 110 et seq. The divisible damages include damages or loss caused to his vessel or her cargo or freight, passage money or hire and also any salvage or other expenses consequent on the fault of his vessel recoverable from him by way of damages: see PARA 800.

4 So the second owner could not recover this sum from his insurers under a 'running down clause' not providing for settlement on the principle of cross-liabilities: see *London Steamship Owners' Insurance Co v Grampian Steamship Co* (1890) 24 QBD 663, 6 Asp MLC 506, CA.

5 *London Steamship Owners' Insurance Co v Grampian Steamship Co* (1890) 24 QBD 663 at 667, 6 Asp MLC 506 at 507, CA.

6 See *Stoomvaart Maatschappij Nederland v Peninsular and Oriental Steam Navigation Co* (1882) 7 App Cas 795, 4 Asp MLC 567, HL; *Young v Merchants' Marine Insurance Co Ltd* [1932] 2 KB 705 at 707, 18 Asp MLC 341 at 343, CA.

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802. Limitation of liability.

Either owner can proceed to limit¹ his liability², and pay into court the sum due from him in case of such limitation. In such a case the owner of the ship who is entitled to receive the larger payment towards his damages, and to whom, therefore, a balance is due, can prove against the fund for the amount of the balance³.

1 le under the Merchant Shipping Act 1995 s 185 (see PARA 1042).

2 See the Merchant Shipping Act 1995 s 187; and PARA 800.

3 *Stoomvaart Maatschappij Nederland v Peninsular and Oriental Steam Navigation Co* (1882) 7 App Cas 795, 4 Asp MLC 567, HL. As to the rule of division of loss see PARA 800; and as to the determination of liability see PARAS 796-799.

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803. More than two ships in fault.

Under the Merchant Shipping Act 1995, where more than two ships have been in collision, and they have all been in fault, the liability to make good the damage or loss will be distributed among them in proportion to the degree in which each ship was in fault¹. Thus, when a tug, tow and third vessel are all in fault for a collision between any two of them, each vessel must normally be allotted its own proportion of the damages². It may be a great disadvantage to one vessel in such a case to allow judgment to go by default in an action by one of the others³.

1 See the Merchant Shipping Act 1995 s 187; and PARA 800.

2 *Trishna (Owners, Master and Crew) v Panther (Owners), The Panther and The Ericbank* [1957] P 143, [1957] 1 All ER 641, [1957] 1 Lloyd's Rep 57 (tug and third vessel damaged; tow and third vessel each to blame to the extent of one-quarter and tug to blame to extent of one-half), distinguishing *The Socrates and The Champion* [1923] P 76 (revsd on the facts [1923] P 162, CA) (where, the tug and tow having been held in fault for jointly participating in a negligent operation, the court refused to apportion liability between them and held them jointly and severally liable for half of the third vessel's damage); *Miraflores (Owners) v George Livanos (Owners)* [1967] 1 AC 826, [1967] 1 All ER 672, [1967] 1 Lloyd's Rep 191, HL; *The Eglantine, Credo and Inez* [1990] 2 Lloyd's Rep 390, CA. For decisions before the Maritime Conventions Act 1911 (repealed) cf *The Englishman and The Australia* [1894] P 239, 7 Asp MLC 603 (cited in PARA 813 note 3); *The Harvest Home* [1905] P 177, 10 Asp MLC 118, CA. As to the incidence of liability for collisions involving tug and tow see PARAS 812, 813; and as to the rules of good seamanship concerning tug and tow see PARA 771.

3 See *The Morgengry and The Blackcock* [1900] P 1, 8 Asp MLC 591, CA (an action against a tow and a tug where the decree went by default against the tow; the action proceeded against the tug, and both the plaintiffs' vessel and the tug were held to be to blame, and the plaintiffs were held to be entitled to the proceeds of sale of the tow and half their damage (see PARA 800) from the tug owners, the proceeds and the half not exceeding the whole of the plaintiffs' loss).

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804. Third innocent vessel.

Where, by the fault of two vessels, a collision is caused between one of them and a third innocent vessel, the statutory provision as to division of liability¹ does not directly² apply to an action by the owners of the innocent vessel against either or both of the wrong-doing vessels for the full amount of their damages³.

1 le the Merchant Shipping Act 1995 s 187 (see PARA 800).

2 As to the determination of liability see PARAS 796-799; and as to the right of contribution see PARA 807.

3 See *The Cairnbahn* [1914] P 25 at 28, 12 Asp MLC 455 at 456 (on appeal at 39 and at 460) (where an innocent tow was damaged owing to the joint equal negligence of the tug and a third vessel, and, although judgment was entered against both the tug and the third vessel, the tow owners recovered damages in full against the owners of the third vessel); *The Kursk* [1924] P 140, 16 Asp MLC 374, CA (where, as a result of separate negligent acts by two vessels, a collision took place between one of the two and a third vessel, and the third vessel was allowed to bring separate actions against each of the negligent vessels). The same rule existed before the Maritime Conventions Act 1911 (repealed): see *Devonshire (Owners) v Barge Leslie (Owners)* [1912] AC 634, 12 Asp MLC 210. It appears that, according to the International Convention for the Unification of Certain Rules of Law respecting Collisions (Brussels, 23 September 1910; TS 4 (1913); Cd 6677) art 4, it was provided that even to innocent third parties a vessel was only to be liable in proportion to the degree in which she was in fault: see Roscoe and Robertson's *Maritime Conventions Act 1911* p 8. The Maritime Conventions Act 1911 (repealed) was passed to enable this Convention to be carried into effect, but in the above respect it appears not to have done so. In *The Cairnbahn*, the only collision was between the innocent vessel and one of the wrongdoing vessels, but the same rule applies if the collision was the result of a collision between the two wrong-doing vessels. As to the law on this point before the Maritime Conventions Act 1911 (repealed) see *The Frankland* [1901] P 161, 9 Asp MLC 196. See further *The Umona* [1914] P 141, 12 Asp MLC 527 (where in an action by a tow which had been damaged owing to the joint negligence of the tug and a third vessel, both of which were found to blame, it was held that the tow was not an innocent tow, as the owners of the tug were at the time of the collision, as bailees for hire, the owners of the tow). As to the measure of damages recoverable by the owner of the cargo on the tow see PARA 805; and as to the general incidence of liability see PARA 808 et seq.

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805. Rights of cargo owners and others.

Where cargo in one vessel is damaged by a collision with another vessel by the fault of both of them¹, the cargo owner is by statute only entitled to recover in tort from each vessel a proportion of his loss corresponding to the degree to which that vessel was to blame for the collision². It would seem that he is entitled to recover in full in contract against the owner of the vessel carrying his cargo, but any right of recovery against that owner may be qualified by the contract of carriage contained, for example, in the charterparty or bill of lading³.

It seems that in similar circumstances the right of the master or a member of the crew to recover damages for lost effects⁴ or the right of a passenger to recover his passage money⁵ or to recover for damage or loss of luggage⁶ against the owner of the other vessel is similarly limited by the statutory provision as to division of loss⁷ where the claim is in tort. The right of a passenger to recover from the owner of the vessel by which he is sailing may be qualified by his contract⁸.

1 As to the determination of liability when both vessels at fault see PARAS 796-799.

2 See the Merchant Shipping Act 1995 s 187; and PARA 800. See also *The Umona* [1914] P 141, 12 Asp MLC 527 (where, a third vessel being held three-quarters to blame and the tug one-quarter, the owner of the cargo in the tow was held only entitled to recover three-quarters of his damage as the owners of the tug were treated as owners of the tow). As to the application of the rule as to apportionment of loss to a cargo owner's right to recover in respect of a contribution to general average expenses see PARA 837.

3 See the Merchant Shipping Act 1995 s 187(5) (cited in PARA 800); and *The Giacinto Motta* [1977] 2 Lloyd's Rep 221 (where an exception clause was held to extend to an indirect claim by a party who had had to pay the party who suffered the actual loss).

4 As to this right see *The Petrel* [1893] P 320.

5 Cf the Merchant Shipping Act 1995 s 187(6) (cited in PARA 800), which defines 'freight' as including passage money and hire.

6 Cf the Merchant Shipping Act 1995 s 187(1) (cited in PARA 800), which refers to 'any property on board'.

7 Ie limited by the Merchant Shipping Act 1995 s 187 (see PARA 800).

8 See **CARRIAGE AND CARRIERS**; cf the Merchant Shipping Act 1995 s 187(5) (cited in PARA 800).

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806. Loss of life and personal injuries.

Where loss of life or personal injuries are suffered by any person on board a ship¹ owing to the fault of that ship and of any other ship or ships, the liability of the owners² of the ships is joint and several³.

However, nothing in these provisions is to be construed as depriving any person of any right of defence on which he might otherwise have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or affects the right of any person to limit his liability in the manner provided by law⁴.

1 As to the meaning of 'ship' see PARA 229.

2 The Merchant Shipping Act 1995 s 188 applies to persons other than the owners of a ship who are responsible for the fault of the ships, as well as to the owners of a ship; and, where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, s 188 applies to the charterers or other persons for the time being so responsible instead of the owners: see s 187(3), applied by s 188(2).

3 Merchant Shipping Act 1995 s 188(1). References to damage or loss caused by the fault of a ship include references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages: s 187(7), applied by s 188(4). As to the determination of liability see PARA 796; as to actions in respect of death or personal injuries see PARA 821; and as to the time limit for actions by persons on board one vessel or their representatives against the owners of another vessel see PARA 841.

4 Merchant Shipping Act 1995 s 188(3).

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807. Loss of life or personal injuries; right of contribution.

Where loss of life or personal injuries are suffered by any person on board a ship¹ owing to the fault of that ship and any other ship or ships, and a proportion of the damages is recovered against the owners² of one of the ships which exceeds the proportion in which the ship was in fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault³.

In addition to any other remedy provided by law, the persons entitled to any contribution recoverable under these provisions have, for the purposes of recovering it, the same rights and powers as the persons entitled to sue for damages in the first instance⁴.

Nothing in these provisions authorises the recovery of any amount which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor⁵.

When by the fault of two vessels a collision is caused between one of them and a third innocent vessel, the owner of one of the two vessels in fault who has been compelled to pay damages in full to the innocent vessel can recover against the owner of the other vessel in fault a proportion, not only of the damage to his own vessel, but also of the damages which he has paid to the owner of the innocent vessel⁶, but he cannot recover any proportion of the costs of unsuccessfully disputing his liability to the owner of the innocent vessel⁷.

1 As to the meaning of 'ship' see PARA 229.

2 The Merchant Shipping Act 1995 s 189 applies to persons other than the owners of a ship who are responsible for the fault of the ships, as well as to the owners of a ship; and, where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, s 189 applies to the charterers or other persons for the time being so responsible instead of the owners: see s 187(3), applied by s 189(2).

3 Merchant Shipping Act 1995 s 189(1). See *Miraflores (Owners) v George Livanos (Owners)* [1967] 1 AC 826, [1967] 1 All ER 672, [1967] 1 Lloyd's Rep 19, HL. As to the time limit for proceedings for contribution founded on Admiralty jurisdiction see PARA 151; and as to the determination of liability see PARA 796.

4 Merchant Shipping Act 1995 s 189(4).

5 Merchant Shipping Act 1995 s 189(3). See also *The Cedric* [1920] P 193, 15 Asp MLC 285 (where no contribution was recoverable where the owners of the vessel against whom contribution was sought were protected by foreign law); *The Molière* [1925] P 27, 16 Asp MLC 470 (where it was held that the provisions as to contribution did not apply to statutory compensation payable independently of fault of the shipowners).

6 *The Cairnbahn* [1914] P 25, 12 Asp MLC 455, CA.

7 *The Cairnbahn (No 2)* (1913) 29 TLR 559; affd (1914) 30 TLR 309, CA. The costs of fighting claims for loss of life or personal injuries are, however, apportionable under the Merchant Shipping Act 1995 s 187: see *The Napier Star* [1939] P 330, 64 Ll L Rep 197; and PARA 800.

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(6) GENERAL INCIDENCE AND EXTENT OF LIABILITY

(i) Parties Liable

808. Personal liability.

The person who by his negligent act or omission causes a ship to collide and do damage is liable for the damage caused by that negligent act or omission¹.

¹ *Stort v Clements* (1792) Peake 107 (where the pilot (defendant) escaped liability); *Nicholson v Mounsey and Symes* (1812) 15 East 384 (where the captain of naval ship was held not liable for the negligence of his lieutenant); *Lawson v Dumlin* (1850) 9 CB 54 (where the pilot (defendant) was held liable); *Smith v Voss* (1857) 2 H & N 97 (similar case). As to the prevention of collisions see PARA 720 et seq (ie under the International Regulations for Preventing Collisions at Sea 1972) and PARA 758 et seq (common law cases reflecting customary rules of good seamanship). As to the cause of action in negligence see PARA 785; as to the burden of proof in collision cases see PARA 786; and as to limitation of liability see PARA 1042 et seq.

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809. Vicarious liability of owner.

In accordance with the general principles of employment law, the owner of a ship is liable for damage caused by the negligence of his employees¹ on board the ship when they are acting within the scope of their employment². If there is no evidence as to who is the employer of the person in charge of a ship, it seems that the burden is on the owner to show that the person in charge was not his employee³.

The liability of the owner as a rule, in Admiralty as at common law, rests on his responsibility for the acts of his employees and agents, and does not depend on the ownership of the vessel⁴. In some cases, however, the legislature has imposed a liability on the owner of a ship as owner for damage done by her⁵.

1 As to the liability of an owner for the negligence of a compulsory pilot see PARA 579.

2 As to the liability of an employer to third persons for the torts of his employee see **TORT** vol 45(2) (Reissue) PARA 802. Owners were not liable for acts held to have been committed outside the course of their employee's employment in *The Druid* (1842) 1 Wm Rob 391 (where a tug master, authorised to demand dues for towing, maliciously detained and damaged a ship whose master refused to pay dues); *The Ida* (1860) Lush 6 (where a master cast off the moorings of another vessel in order to move his own vessel, the actual decision turning on questions of jurisdiction); cf *M'Gee v Anderson* (1895) 22 R 274; *Currie v M'Knight* [1897] AC 97, 8 Asp MLC 193, HL (where the master of one vessel cut the moorings of another in order to save his own vessel in gale, and the House of Lords, without considering the correctness of the decision of the Scottish court that the owners of the first-mentioned vessel were liable for the master's act, held that no maritime lien attached to that vessel as she was not the instrument of mischief) (see PARA 1017). A question may arise whether the general or temporary employer of an employee is liable for the employee's act: see eg *Martin v Temperley* (1843) 4 QB 298 (where the owner was liable for the act of a hired waterman); *The Louise* (1901) 18 TLR 19, DC (where a gang moving a ship in a dock were held to be the employees of the dock company). As to chartered ships see PARA 811; and as to tugs and tow see PARA 813. As to the cause of action in negligence see PARA 785.

3 See *Joyce v Capel* (1838) 8 C & P 370; *Hibbs v Ross* (1866) LR 1 QB 534. A person wrongfully registered as managing owner is not necessarily held out as the agent of the registered owner of shares in a ship: *Frazer v Cuthbertson* (1880) 6 QBD 93 at 98. The burden lies on the owner because the relevant facts are peculiarly within his knowledge: *Hibbs v Ross* at 543; and see **CIVIL PROCEDURE** vol 11 (2009) PARA 772. As to the burden of proof in collision cases see PARA 786.

4 *Hibbs v Ross* (1866) LR 1 QB 534. At common law, the owner would not be liable merely because he was the owner or without showing that those navigating the vessel were his employees: *River Wear Comrs v Adamson* (1877) 2 App Cas 743 at 751, 3 Asp MLC 521 at 522, HL. The owner of a ship is liable to an action for damages, not because he is the owner, but because he is the employer of the captain and crew, whose negligence in the course of their employment occasioned the damage: *Simpson v Thomson* (1877) 3 App Cas 279 at 293, 3 Asp MLC 567 at 572, HL. As to the liability of owners as such see PARAS 242-244; and as to the liability of a ship to maritime liens when in the hands of charterers or other persons allowed to use her see PARA 1017.

5 See the Harbours, Docks, and Piers Clauses Act 1847 s 74; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 754.

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810. Liability of master.

The master is liable for damage arising from his own negligence¹ or breach of contract made with the owner of cargo shipped on his vessel². He is not, however, liable for the damage done by an act of the crew or of the pilot, whether done in the course of their duty to the shipowner or not, unless ordered by him³.

1 See PARA 808.

2 As to contracts for the carriage of goods see **CARRIAGE AND CARRIERS**.

3 *Stort v Clements* (1792) Peake 107; *M'Manus v Crickett* (1800) 1 East 106; *Bowcher v Noidstrom* (1809) 1 Taunt 568 (where the master was not liable for wilful injury to another ship done by one of his crew without his privity or direction, but by order of the pilot); *Aldrich v Simmons* (1816) 1 Stark 214 (where it was held that the captain could not be responsible to the owner for the pilot's misconduct); *Blaikie v Stembridge* (1860) 6 CBNS 894 (where a stevedore appointed by the charterer, but paid by and acting under the master's orders, was held not to be the employee or agent of the master so as to render him responsible); *Oakley v Speedy* (1879) 4 Asp MLC 134 (where, with a compulsory pilot in charge, a master was held not criminally liable for a breach of the regulations in the absence of proof that he wrongfully interfered with the navigation). As to a master's liability see also PARA 431; and as to the liability of the shipowner see PARA 809.

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811. Chartered ship.

If a vessel while on charter¹ collides with another vessel and causes damage, the question whether the charterer or the owner is liable depends on whether the person guilty of the negligence which caused the collision² was, when so guilty, the employee or agent of the charterer or of the owner³.

The ratio decidendi in cases in which vessels in the hands of charterers have been held liable in actions in rem is that the charterers are considered as 'pro hac vice' owners⁴.

1 As to the meaning of 'charterparty' see **CARRIAGE AND CARRIERS**.

2 As to establishing the cause of action in negligence see PARA 785.

3 See eg *Scott v Scott* (1818) 2 Stark 438 (it seems that the owner of a barge is not liable for the negligence of the employees of another person to whom he has lent it); *Fenton v City of Dublin Steam Packet Co* (1838) 8 Ad & El 835 (where the owners kept their own crew on board and were to keep the vessel in good order, and they were held liable for the crew's negligence, although the crew were to be paid by the charterer); *Dalyell v Tyrer* (1858) EB & E 899 (where a passenger who had contracted for a passage with the lessee of a ferry was held entitled to recover from the owners of a tug, hired by the lessee for one day, for injury arising from negligence of the tug's crew); *Hodgkinson v Fernie* (1857) 2 CBNS 415 (it seems that the owner of a vessel hired by the government is not responsible for damage resulting from the master's obedience to the order of the officer commanding the expedition); *Baumwoll Manufactur von Carl Scheibler v Furness* [1893] AC 8, 7 Asp MLC 263, HL. As to when a charterparty amounts to a demise of the ship see eg *Associated Portland Cement Manufacturers (1910) Ltd v Ashton* [1915] 2 KB 1, 13 Asp MLC 40, CA; and **CARRIAGE AND CARRIERS**.

4 *The Lemington* (1874) 2 Asp MLC 475 (where a chartered vessel was held liable in an action in rem for collision, as the crew were the employees of the charterers, who were *pro hac vice* owners); *The Tasmania* (1888) 13 PD 110, 6 Asp MLC 305 (where a chartered tug was held not liable in an action in rem for a collision with her tow, as the charterers had contracted with the owners of the tow to be free from the liability). See also PARA 1017. As to the liability of shipowners see PARA 809.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/8. AVOIDANCE OF COLLISIONS/(6) GENERAL INCIDENCE AND EXTENT OF LIABILITY/(i) Parties Liable/812. Collision between tug and tow.

812. Collision between tug and tow.

In case of a collision between a tug and her tow causing damage¹, a liability arises in favour of the one and against the other if the collision is due to the other not fulfilling her duties under the contract of towage².

In the absence of agreement to the contrary³, there is in a contract of towage an implied warranty by the owners of the tug that she is fit for her service⁴. It is also implied that her crew, tackle and equipment will be equal to the work to be accomplished in the weather and other circumstances reasonably to be expected, and that reasonable skill, care and energy will be shown in accomplishing the work⁵.

Further, it is implied that neither party will negligently create unnecessary risk to the other or increase any risk incidental to the service⁶. The tug owners are not responsible if the towing becomes impossible through no fault of theirs⁷; nor can they recover compensation from the owners of the tow for damage incurred by the tug owing to dangerous circumstances without misconduct of the tow⁸. The owners of the tow are liable for damage arising to the tug from improper orders of the tow, for example to get connection⁹.

1 As to the duty to prevent collision between tug and tow see PARA 771.

2 As to the contract of towage generally see PARA 587 et seq.

3 As to conditions relieving the tug from liability see PARA 590.

4 *The Undaunted* (1886) 11 PD 46, 5 Asp MLC 580; *The West Cock* [1911] P 208 at 217, 12 Asp MLC 57, CA; *The Maréchal Suchet* [1911] P 1 at 12, 11 Asp MLC 553. A contract for a named tug, however, excludes any implied warranty: *Robertson v Amazon Tug and Lighterage Co* (1881) 4 Asp MLC 496, CA; *Point Anne Quarries v The MF Whalen* (1922) 39 TLR 37, PC.

5 *The Robert Dixon* (1879) 4 PD 121 (affd 5 PD 54, 4 Asp MLC 246, CA); *The Maréchal Suchet* [1911] P 1, 11 Asp MLC 553; cf *Preston Corp v Biornstad*, *The Ratata* [1898] AC 513, 8 Asp MLC 427, HL (where a harbour authority undertook to tow a number of vessels up a tidal river with hired tugs). The main burden of keeping the tug clear of the tow lies on the tug, whether in making fast (*Harmony v Faraday* (1920) 5 Ll L Rep 177; *Contest v Age* (1923) 17 Ll L Rep 172; *Assistance v Lagarto* (1923) 17 Ll L Rep 264), or in manoeuvring during the towage service (*Alexandra (Newport and South Wales) Docks and Rly Co (Lady Tredegar) v Cape Colony* (1920) 4 Ll L Rep 116). As to negligence in the construction, equipment or manning of a vessel see PARA 788; and as to the exercise of reasonable care and skill see PARA 790.

6 *The Julia* (1860) Lush 224 at 231, PC; and see *Harmony v Northborough* (1923) 15 Ll L Rep 119 (where a vessel was held to blame for working her engines while her tug was making fast on her quarter). See further PARA 588.

7 *The Maréchal Suchet* [1911] P 1 at 12, 11 Asp MLC 553 at 556.

8 *The Julia* (1860) Lush 224, PC. As to the position where damage has been caused by the fault of both vessels see PARAS 796-799; and as to the division of loss in proportion to fault see PARA 800 et seq.

9 See note 8.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/8. AVOIDANCE OF COLLISIONS/(6) GENERAL INCIDENCE AND EXTENT OF LIABILITY/(i) Parties Liable/813. Collision of tug or tow with a third vessel.

813. Collision of tug or tow with a third vessel.

In case of a collision with a third vessel, the owners of the tug and the tow are normally responsible for damage caused by their own negligence or the negligent navigation of their respective vessels¹. Where there have been defects in equipping or planning the operation, both the persons responsible for the care of the tow and the owners of the tug may share responsibility². The owners of the tow are responsible, to the exclusion of the tug owners, for injury caused to third persons by the negligence of the tug only if the relation of employer and employee in fact exists between the owners of the tow and those in charge of the tug in relation to the negligent act or omission complained of³.

As against third persons, the question whether those in charge of the tug are the employees of the owners of the tow is not concluded by the terms of the contract of towage, but depends⁴ on who has control of the manner in which the work of the tug is done in relation to the relevant act or omission⁵.

Where the general control of navigation is in the tow, although the motive power is in the tug, the owners of the tow are liable for an act or omission by the tug within the scope of the general control of the pilot or officer in charge of the tow⁶, but are not normally liable for negligence by the tug in a matter falling outside such control and within the discretion of the tug master, such as the detail of a manoeuvre of the tug⁷. Where the control of navigation is in the tug⁸, the owners of the tow are not normally liable to third persons for the negligence of the tug⁹ unless the tug and tow are in the same ownership¹⁰.

1 As to negligence causing damage generally see PARA 785 et seq; as to the distribution of liability where the tug, tow and the third vessel have all been at fault see PARA 803; and as to the rights of the owner of the third vessel where his vessel and the tug have both been to blame for a collision in respect of which the owners of the tow have recovered against him see *The Cairnbahn* (1914) 29 TLR 60; and PARA 807.

2 *Thomas Stone Shipping Ltd v Admiralty, The Albion* [1953] P 117, [1953] 1 All ER 978, [1953] 1 Lloyd's Rep 239, CA.

3 *The Quickstep* (1890) 15 PD 196 at 199, 6 Asp MLC 603 at 604; *Devonshire (Owners) v Barge Leslie (Owners)* [1912] AC 634, 12 Asp MLC 210, HL. As to the liability of shipowners generally see PARA 809. Certain cases in which it was suggested that the owners of the tow were liable for the negligence of the tug in all cases (see eg *The Ticonderoga* (1857) Sw 215) or that the owners of the tow and the owners of the tug might both be liable for the tug's negligence merely on the ground that the relationship of employer and employee existed between tow and tug (see *The Englishman and The Australia* [1894] P 239, 7 Asp MLC 603), can no longer be considered authoritative.

4 In accordance with the general principle which determines whether the general employer or the temporary employer is liable for the torts of an employee temporarily hired by one employer to another: see **TORT** vol 45(2) (Reissue) PARA 803.

5 *Trishna (Owners, Master and Crew) v Panther and Ericbank (Owners), The Panther and The Ericbank* [1957] P 143 at 147-149, [1957] 1 All ER 641 at 647, 648, [1957] 1 Lloyd's Rep 57 at 67. See also eg *The Adriatic and The Wellington* (1914) 30 TLR 699. As to the contract of towage generally see PARA 587 et seq; and as to the relation between tug and tow see PARA 771.

6 See *Stevens v Gourley, The Cleadon* (1860) 14 Moo PCC 92 at 97; *Union Steamship Co v Aracan (Owners), The American and The Syria* (1874) LR 6 PC 127 at 132, 2 Asp MLC 350 at 361; cf *Trishna (Owners, Master and Crew) v Panther and Ericbank (Owners), The Panther and The Ericbank* [1957] P 143 at 148, 149, [1957] 1 All ER

641 at 648, [1957] 1 Lloyd's Rep 57 at 67. As to the circumstances in which the tow controls the navigation see PARAS 589, 771.

7 *Trishna (Owners, Master and Crew) v Panther and Ericbank (Owners), The Panther and The Ericbank* [1957] P 143, [1957] 1 All ER 641, [1957] 1 Lloyd's Rep 57; and see *The Niobe* (1888) 13 PD 55 at 60, 6 Asp MLC 300 at 302. *The Sinquasi* (1880) 5 PD 241, 4 Asp MLC 383 cannot now be considered an authority to the contrary.

8 This is usually the case when a tug is towing barges in a river: see PARA 771.

9 *Union Steamship Co v Aracan (Owners), The American and The Syria* (1874) LR 6 PC 127, 2 Asp MLC 350 (ship towing another at sea); *The Quickstep* (1890) 15 PD 196, 6 Asp MLC 603; *The Comet (Owners) WH No 1 (Owners), The WH No 1 and The Knight Errant* [1911] AC 30, 11 Asp MLC 497; *The Adriatic and The Wellington* (1914) 30 TLR 699, HL (cases of tugs towing barges in rivers); and see *Devonshire (Owners) v Barge Leslie (Owners)* [1912] AC 634, 12 Asp MLC 210, HL. The tug owners may, however, be entitled under the terms of the contract of towage to be indemnified by the owners of the tow against liability to third persons: see *The Riverman* [1928] P 33, 17 Asp MLC 344; and see generally PARA 590.

10 *The Umona* [1914] P 141 at 145, 12 Asp MLC 527 at 529; *The Ran, The Graygarth* [1922] P 80, 15 Asp MLC 517, CA (explaining and distinguishing *Union SS Co v Aracan (Owners), The American and The Syria* (1874) LR 6 PC 127, 2 Asp MLC 350, as regards the effect of common ownership).

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814. Vessel acting under orders of harbour or dock master.

When a collision is caused by those on board a vessel following the orders of a harbour master or dock master, given within the limits of his jurisdiction¹, the owner of the ship is not normally liable for the damage caused by the collision². The orders of such an official have, however, to be executed with care, and, whether the order is properly given or not, the shipowner will be liable in the event of negligence on the part of the master or crew³. An official who has given a negligent order is personally liable for the damage resulting from it. The harbour or dock authority is also in general liable if the harbour master or dock master giving the order gave it within the scope of his authority⁴. Harbour authorities are entitled in certain circumstances to limit their liability⁵.

1 As to the statutory powers of a harbour or dock master with regard to the control of shipping see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 693; and as to the duty to obey the orders of a harbour master or dock master see PARA 784.

2 *The Bilbao* (1860) Lush 149; *Reney v Kirkcudbright Magistrates* [1892] AC 264, 7 Asp MLC 221, HL; *Taylor v Burger* (1898) 8 Asp MLC 364, HL; *The Mystery* [1902] P 115, 9 Asp MLC 281, CA. As to the vicarious liability of shipowners see PARA 809.

3 *The Excelsior* (1868) LR 2 A & E 268; *The Belgic* (1875) 2 PD 57n, 3 Asp MLC 348; *The Framlingham Court* (1936) 56 Ll L Rep 200. Cf *The Rockabill* [1937] P 93 at 102, [1937] 1 All ER 191 at 193, 56 Ll L Rep 149 at 152, CA (where Greer LJ described a dock master's order as a 'conditional order', ie an order to come ahead subject to a good look-out being kept). As to negligence causing damage see PARA 785 et seq.

4 See **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 745 et seq.

5 See the Merchant Shipping Act 1995 s 191; and PARA 1064.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/8. AVOIDANCE OF COLLISIONS/(6) GENERAL INCIDENCE AND EXTENT OF LIABILITY/(i) Parties Liable/815. National ships.

815. National ships.

When one of Her Majesty's ships by the negligence of the person in charge of her collides with another vessel, causing damage¹, the person whose negligence caused the collision is liable for the damage resulting from his negligence, but his superior officers are not liable unless they were privy to the negligence².

An action in personam generally lies against the Crown for damage caused by the negligence of those in charge of a Crown ship³, but proceedings in rem do not lie against a Crown ship⁴.

Foreign and Commonwealth states are immune from proceedings in rem against their ships⁵, unless they are in use for commercial purposes⁶. Vessels, other than commercial vessels⁷, owned by a foreign state are also immune from arrest⁸.

1 As to negligence causing damage see PARA 785 et seq; and as to personal liability see PARA 808.

2 *The Mentor* (1799) 1 Ch Rob 179 (where it was held that an action does not lie against the admiral of a station for the destruction of a vessel, after hostilities have been declared to cease, by a ship acting under the admiral's general orders; the action must be against the immediate wrongdoer); *The Volcano* (1844) 2 Wm Rob 337 (where the commander of one of Her Majesty's ships was condemned in a cause of damage); *The Birkenhead* (1848) 3 Wm Rob 75 (a similar case); *HMS Bellerophon* (1874) 3 Asp MLC 58 (no obligation on officer in charge of ship to give notice of her ram, where no reasonable ground for apprehending danger); *HMS Sans Pareil* [1900] P 267, 9 Asp MLC 78, CA; *Hero (Owners) v Admiralty Comrs* [1912] AC 300, 12 Asp MLC 108, HL (both vessels held to blame); and see *HMS Archer* [1919] P 1 (limitation of action against naval officer). As to the vicarious liability of shipowners see PARA 809.

3 As to the application of provisions limiting the period within which action may be brought see PARA 841. As to procedure see **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 115 et seq.

4 See PARA 179.

5 See the State Immunity Act 1978 s 1; and **CIVIL PROCEDURE** vol 11 (2009) PARA 221.

6 See the State Immunity Act 1978 s 10(1), (2); and **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 254.

7 See the State Immunity Act 1978 s 13(4); and **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 257.

8 See the State Immunity Act 1978 s 13(2)(b); and **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 257.

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816. Collision with wreck.

Where a wreck is a danger to navigation, the owner or person in charge of it is under a duty¹ to mark or light the wreck for the protection of other shipping and may be liable in negligence² for damage consequent on his failure to take reasonable care to do so³.

If, however, a conservancy or harbour or other authority having power to light the wreck has been sufficiently notified of the wreck, and has undertaken the duty of marking and lighting it, the fact that the owner does not ensure that it is lighted is not negligence on his part⁴. It seems that, if an owner of a wreck properly abandons it or transfers possession and control of it to another person, any subsequent failure to mark or light the wreck is not negligence on his part⁵.

If the wreck is not abandoned either to the harbour authority or otherwise, and the owner himself employs a contractor to mark the position of the wreck or raise it, and the contractor acts negligently in marking or in raising it so as to cause damage, the owner is liable for the damage⁶.

1 See *White v Crisp* (1854) 10 Exch 312 (vessel foundered in Bristol Channel).

2 Negligence after the sinking of the wreck, with which the text is concerned, must be distinguished from negligence causing the sinking which may lead to responsibility to a harbour or other authority for damage or for expenses of removal of the wreck: see PARAS 1008-1009; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 691.

3 As to negligence causing damage generally see PARA 785 et seq. As to the meaning of 'reasonable care' in this context see PARA 790.

4 *The Douglas* (1882) 7 PD 151 at 158, 5 Asp MLC 15 at 16, CA (vessel sunk in the Thames); *Utopia (Owners) v Primula (Owners and Masters)*, *The Utopia* [1893] AC 492, 7 Asp MLC 408, PC (vessel sunk in the Straits of Gibraltar); *The Snark* [1900] P 105, 9 Asp MLC 50, CA (possession, management and control of barge sunk in Thames not transferred). As to delegation of duties cf *The Jersey* [1942] P 119. As to instances of insufficient lighting see further PARA 1010.

5 See *Utopia (Owners) v Primula (Owners and Master)*, *The Utopia* [1893] AC 492 at 498, 7 Asp MLC 408 at 410, PC. The passage referred to must not be read to mean that by abandoning a wreck an owner of a ship can escape damage for his negligence before the abandonment: see *Dee Conservancy Board v McConnell* [1928] 2 KB 159 at 166, 17 Asp MLC 433 at 436, CA. Negligence in lighting a wreck after it has been abandoned by its owner to a conservancy authority is not negligence of the owners, nor are they then under a duty to light the wreck: *The Manorbier Castle* (1922) 16 Asp MLC 151 at 154.

6 *The Snark* [1900] P 105, 9 Asp MLC 50, CA; cf *Penny v Wimbledon UDC* [1899] 2 QB 72, CA; and *The Jersey* [1942] P 119 at 126, 127. As to vicarious liability of shipowners for the acts of employees see PARA 809.

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(ii) Inevitable Accident

817. Defence of inevitable accident.

A collision is said to be the result of an inevitable accident if it could not have been prevented by the exercise of reasonable care and ordinary skill¹.

Where the defendant has prima facie caused the collision, the burden is on him to prove that the collision was an inevitable accident². To prove it, he must show that the occurrence of the accident was consistent with the exercise on his part of reasonable care and skill, and that he exercised reasonable care and skill³. It is no excuse for a master that he could not prevent the accident when it occurred, if he neglected to use precautionary measures which would have rendered the accident less probable⁴.

1 *The Virgil* (1843) 2 Wm Rob 201 at 205; *The Europa* (1850) 14 Jur 627, DC; *The Lochlibo* (1850) 3 Wm Rob 310 at 318; *The Thomas Powell v The Cuba* (1866) 14 LT 603 (extraordinary skill or extraordinary diligence not expected, but that degree of skill and that degree of diligence which is generally found in persons who discharge their duty); *The Marpesia* (1872) LR 4 PC 212 at 220, 1 Asp MLC 261 at 264, 265; *The Schwan, The Alabano* [1892] P 419, 7 Asp MLC 347, CA; *Lamington v Wentworth* (1922) 12 Ll L Rep 259. As to the meaning of 'reasonable care' and 'reasonable skill' see PARA 790. As to the prevention of collisions see PARA 720 et seq (ie under the International Regulations for Preventing Collisions at Sea 1972) and PARA 758 et seq (common law cases reflecting customary rules of good seamanship). As to the circumstances in which the defence arises see PARA 818.

2 *The Annot Lyle* (1886) 11 PD 114, 6 Asp MLC 50, CA. See also *The Polynésien* [1910] P 28, 11 Asp MLC 354. As to the burden of proof in collision cases generally see PARA 786.

3 See *The Llanover* (1945) 79 Ll L Rep 159 at 163; *Southport Corpn v Esso Petroleum Co Ltd* [1954] 2 QB 182 at 193, 194, [1954] 2 All ER 561 at 568, 569, [1954] 1 Lloyd's Rep 446 at 453, 454, CA (on appeal [1956] AC 218, [1955] 3 All ER 864, [1955] 2 Lloyd's Rep 655, HL); *The Louis Sheid* [1958] 1 Lloyd's Rep 606 at 615. In these cases, the courts did not adopt the severer test suggested in *The Merchant Prince* [1892] P 179 at 189, 7 Asp MLC 208 at 211, CA, per Fry LJ (that the defendants must show the actual cause, or all possible causes, of the accident, and in either case that the result could not have been avoided by reasonable care and skill). See also *The Calderon* (1912) Times, 26 March.

4 *The Virgil* (1843) 2 Wm Rob 201; *The Marpesia* (1872) LR 4 PC 212, 1 Asp MLC 261; *The Pladda* (1876) 2 PD 34 at 38. As to the determination of liability when both parties at fault see PARAS 796-799.

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818. Circumstances in which defence may arise.

The defence of inevitable accident¹ may arise in cases of storm² or fog³ or unusual local circumstances⁴, or where a vessel goes ashore⁵ or is disabled by a prior collision⁶, or, if a sailing vessel, is disabled by loss of gear⁷, or a steamer by failure of steering gear or machinery⁸, or otherwise.

1 As to the defence of inevitable accident see PARA 817.

2 *The Pladda* (1876) 2 PD 34 (proper precautions not taken in a storm; cables unchained from anchors, and no look-out on deck); *The Star of the Isles* (1938) 62 Ll L Rep 139, Ct of Sess. See also *R (owner of The Adolph Woermann) v The Hessa* (1922) 10 Ll L Rep 734, CA.

3 *The Marpesia* (1872) LR 4 PC 212, 1 Asp MLC 261 (sailing vessels in fog; inevitable accident); *The Nador* [1909] P 300, 11 Asp MLC 283 (inevitable accident; vessel at anchor in dense fog, and her light not seen, and bell not heard by steamship, in time to avoid her); cf *The Rosetta* (1888) 6 Asp MLC 310 (inability to hear sound in fog not necessarily negligence). See also *The Shannon* (1842) 1 Wm Rob 463 (collision in Sea Reach due to the darkness of the night); *The Valdes* (1914) 31 TLR 144 (defence of inevitable accident unsuccessful) (see PARA 786 note 9).

4 *The Secret* (1872) 1 Asp MLC 318 (harbour entrance found obstructed; proper precautions as regards shortening sail, anchor etc not taken); *The City of Peking Compagnie des Messageries Maritimes, The City of Peking* (1888) 14 App Cas 40, 6 Asp MLC 396, PC (exceptional current ought to have been anticipated; port anchor not ready, and delay with starboard anchor); *The Boucau* [1909] P 163, 11 Asp MLC 240 (accident caused by combination of less water than usual, strong breeze and flood, held inevitable); *The Polynésien* [1910] P 28, 11 Asp MLC 354 (abnormal current alleged, but not proved). See also *The Cardiff Hall* [1918] P 56, 14 Asp MLC 328 (ships navigating without lights under Admiralty orders); *Eva v Knutenborg* (1921) 9 Ll L Rep 494 (breaking of dock gates).

5 *The Thornley* (1843) 7 Jur 659 (vessel ashore could not let go anchor).

6 *The Aimor, The Amelia* (1873) 2 Asp MLC 96, PC (inevitable accident; vessel with duty to keep out of the way disabled from doing so by prior collision); cf *The Kjobenhavn* (1874) 2 Asp MLC 213, PC. As to liability for antecedent and subsequent negligence see PARA 799.

7 *The Calcutta, Calcutta (Owners) v Emma (Owners)* (1869) 21 LT 768, PC (where a ship partly disabled by carrying away her fore tack was held not to have done all she should).

8 *The Peerless* (1860) Lush 30 at 103, PC (chain catching on windlass held to be a pure accident); *Doward v Lindsay, The William Lindsay* (1873) LR 5 PC 338, 2 Asp MLC 118 (inevitable accident; mooring buoy broke in a storm; anchor let go, but windlass jammed by accident); *The Virgo* (1876) 3 Asp MLC 285 (inevitable accident; latent defect in steam steering gear); *The Indus* (1886) 12 PD 46, 6 Asp MLC 105, CA (machinery alleged to be out of order, but not so proved, as it worked well before and after); *The Branksome Hall* (1934) 48 Ll L Rep 43 (inevitable accident not proved; unexplained opening of mooring shackle). The failure must be shown to have been consistent with the exercise of reasonable care and skill to prevent it: see PARAS 786, 817.

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(7) RIGHTS AND REMEDIES OF INJURED PARTIES

(i) Persons entitled to Recover

819. Owners of damaged ship.

The beneficial or registered owners of the damaged ship may sue for the damage done to her¹, and so also may the bailees of a ship². The owners of the damaged ship may also sue for damage done to the cargo, as they are bailees of her³. If there is any doubt as to who is entitled to receive the damages, they should be paid into the Admiralty Registry, and the parties rightly claiming them can then establish their right⁴.

1 *The Ilos* (1856) Sw 100. As to ownership generally see PARA 236 et seq; and as to part owners see *Sedgworth v Overend* (1797) 7 Term Rep 279; and PARA 244. Sub-charterers have been held entitled to sue for loss of bill of lading freight: see *The Okehampton* [1913] P 173, 12 Asp MLC 428, CA. As to the right of salvors to sue for damage done to a wreck whilst in their possession see *The Zelo* [1922] P 9, 15 Asp MLC 428; and PARA 843. As to apportionment of liability to make good damage or loss where both vessels are at fault see PARAS 796-799; as to the measure of damages see PARA 822 et seq; and as to limitation of liability see PARA 1042 et seq.

2 *The Minna* (1868) LR 2 A & E 97. See also *The Rosalind* (1920) 90 LJP 126; and PARA 825 note 3.

3 *The Winkfield* [1902] P 42, 9 Asp MLC 259, CA. See further *The Joannis Vatis* [1922] P 92, 15 Asp MLC 506, CA. As to loss by cargo owners see PARA 837.

4 *The Ilos* (1856) Sw 100; *The Minna* (1868) LR 2 A & E 97. As to the Admiralty Registry see PARA 142.

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820. Owners of cargo or other property in ship.

Owners of cargo and other property are entitled to sue the owners of the vessel carrying it for breach of contract to carry it safely¹, or for damage caused to it by negligence², although their right to do so is subject to any valid term in the contract of carriage or statutory provision which abrogates or qualifies the right³. Cargo owners and others can also as a rule recover against the owners of a vessel whose negligent navigation has caused a collision between her and the vessel carrying the cargo⁴, although their right to recover where both vessels were at fault is limited⁵.

1 As to the shipowner's liability as common carrier see **CARRIAGE AND CARRIERS**.

2 As to negligence causing damage see PARA 785 et seq.

3 As to exceptions of collision, negligence etc, and the Hague-Visby Rules see **CARRIAGE AND CARRIERS**.

4 See PARA 837.

5 See PARA 805.

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821. Personal injuries or death.

Persons on board a vessel may at common law sue the owners of the vessel carrying them or another vessel for personal injuries arising from a collision caused by the negligence of those for whom the owners were responsible¹.

By statute, the personal representatives of an innocent person on board a vessel whose death was caused by a collision due to the fault of that vessel or another vessel may sue the owner of the vessel at fault to recover damages². The right of action against a vessel other than that which carried the person who suffered injury or death exists even though the vessel which carried him was also at fault³, and in such a case the liability of the owners of the vessels is joint and several⁴. In the case of passengers, however, the rights of action against the owners of the vessel which carried them may depend on the terms of their contract⁵.

1 As to negligence causing damage see PARA 785 et seq; as to the vicarious liability of shipowners see PARA 809; and as to the measure of damages for personal injuries and death see **DAMAGES** vol 12(1) (Reissue) PARA 878 et seq.

2 See the Fatal Accidents Act 1976 ss 1-2; and **NEGLIGENCE** vol 78 (2010) PARA 24 et seq. As to the limitation of time for proceedings cf PARA 841; **LIMITATION PERIODS**; and as to the survival of causes of action vested in a person before his death see the Law Reform (Miscellaneous Provisions) Act 1934 s 1(1); and **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 814 et seq.

3 *Mills v Armstrong, The Bernina* (1888) 13 App Cas 1, 6 Asp MLC 257, HL; *The Esso Malaysia* [1975] QB 198, [1974] 2 All ER 705, [1974] 2 Lloyd's Rep 143 (collision between two foreign ships outside United Kingdom territorial waters).

4 See PARA 806. As to the right of contribution see PARA 807.

5 See **CARRIAGE AND CARRIERS**; cf PARA 805.

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(ii) Measure of Damages

822. General principles.

Subject to the statutory provisions as to limitation of liability¹ and certain other exceptions², the fundamental principle governing the measure of damages is the payment of full compensation³. The injured party is entitled to be put, as far as practicable, into the same condition as if the injury had not been suffered. He is to have the full value of the property lost⁴. The wrongdoer is, however, it seems, liable only for such damage as a reasonable person should have foreseen as the consequence of the wrongful act⁵. The injured party is bound to prove that he has sustained the loss which he alleges, and he must supply the means for ascertaining its amount⁶. If the injured party can reasonably mitigate the damage done by the collision, he is bound ordinarily to do so⁷.

1 As to which see PARA 1042 et seq.

2 Eg the rule that, where two ships are each to blame for the collision, the innocent owner of cargo on one vessel can recover from the owner of the other vessel only in proportion to the fault of that vessel: see PARA 805.

3 *The Dundee* (1923) 1 Hag Adm 109 at 120; *The Liesbosch, Dredger (owners) v Edison Steamship (owners)* [1933] AC 449, 18 Asp MLC 380, HL. As to the measure of damages generally see **DAMAGES** vol 12(1) (Reissue) PARA 851 et seq.

4 *The Clarence* (1850) 3 Wm Rob 283 at 285; *The Clyde* (1856) Sw 23 at 24. The injured party cannot recover more than is sufficient to place him in the position which he would have occupied if there had been no collision: *The Lady Emerald* (1932) 44 Ll L Rep 176. See further PARA 825.

5 *Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd, The Wagon Mound* [1961] AC 388, [1961] 1 All ER 404, [1961] 1 Lloyd's Rep 1, PC, distinguished on the facts in *Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd, The Wagon Mound (No 2)* [1967] 1 AC 617, [1966] 2 All ER 709, [1966] 1 Lloyd's Rep 657, PC; but see *Re Polemis and Furness, Withy & Co Ltd* [1921] 3 KB 560, 15 Asp MLC 398, CA. See also *Thurogood v Van Den Berghs and Jurgens Ltd* [1951] 2 KB 537 at 552, 555, [1951] 1 All ER 682 at 690, 692, CA, per Asquith LJ. A person cannot escape liability, however indirect the damage, if he foresees or could reasonably have foreseen the intervening events which led to its being done: *Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd, The Wagon Mound* at 426 and at 416. See also *The Gertor* (1894) 7 Asp MLC 472 (damage following on breaking of tow rope was consequence of tow's failure to obtain tug's assistance earlier); *HMS London* [1914] P 72, 12 Asp MLC 405 (delay through strike in repair of vessel damaged by negligence; damages recoverable for loss of use of vessel during strike because loss was 'direct' and 'natural' consequence of negligence or, alternatively, strike was reasonably foreseeable); *The Liesbosch, Dredger (owners) v Edison Steamship (owners)* [1933] AC 449, 18 Asp MLC 380, HL (cited in PARA 825 note 6). Cf *Anglo-Algerian Steamship Co Ltd v Houlder Line Ltd* [1908] 1 KB 659, 11 Asp MLC 45 (negligent damage by defendants' ship to dock gates; plaintiffs not entitled to recover damages for loss suffered through detention of their ship outside dock while gates were repaired); *Société Anonyme de Remorquage à Hélice v Bennetts* [1911] 1 KB 243 (tug sunk by negligence of third person; tug owner not entitled to recover from third person for loss of towage remuneration). See generally **DAMAGES** vol 12(1) (Reissue) PARA 852.

6 *The Clarence* (1850) 3 Wm Rob 283. As to the burden of proof see PARA 824.

7 *The Mediana* [1899] P 127 at 137, 8 Asp MLC 493 at 500, CA. The burden of proof that the claimant has failed in his duty is on the defendant: see *The Bharatkhand* [1952] 1 Lloyd's Rep 470. As to mitigation of damages generally see **DAMAGES** vol 12(1) (Reissue) PARA 1041 et seq.

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823. Nature of indemnity.

If the settlement of the indemnification is attended with any difficulty, the party at fault must, in certain circumstances, bear the inconvenience¹. The injured party may derive a greater benefit than indemnification; for example, in case of repairs and supply of new articles, the wrongdoer, unlike the insurer, is not entitled to a deduction of one-third new for old².

1 As to the measure of damages see PARA 822.

2 *The Gazelle* (1844) 2 Wm Rob 279 at 281; *The Egyptian* (1864) 2 Mar LC 56 at 58. As to the loss for which insurers are liable see **INSURANCE** vol 25 (2003 Reissue) PARA 431 et seq.

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824. Burden of proof.

The burden is always on the claimant who claims damages to prove that the damage was caused by the negligence of the defendant¹. When the claimant has made out a prima facie case that the damage claimed is occasioned by the collision, the burden of proof then shifts to the defendant to show that the damage was not so occasioned, for example by showing that it is to be attributable to another or a concurrent cause for which the claimant is responsible².

1 *The Paludina* [1925] P 40 at 50, 16 Asp MLC 453 at 457, CA; affd sub nom *Singleton Abbey (Owners) v Paludina (Owners)* [1927] AC 16, 17 Asp MLC 117, HL. Cf PARA 827. As to negligence causing damage see PARA 785 et seq; and as to the burden of proof in collision cases particularly see PARA 786.

2 *The Egyptian* (1864) 2 Mar LC 56 at 58 (damage alleged to have been caused by severe weather preceding collision); *The Bharatkhand* [1952] 1 Lloyd's Rep 470 (alleged failure to take steps to mitigate damage); and see **CIVIL PROCEDURE** vol 11 (2009) PARA 771. As to the determination of liability when both parties at fault see PARAS 796-799; and as to the division of loss in proportion to fault see PARA 800 et seq.

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825. Damages in case of total loss.

If a vessel is totally lost by the collision, the measure of damages is the value of the vessel to her owners as a going concern at the time and place of the loss, and, in assessing that value, regard must be had to her pending engagements, whether profitable or unprofitable¹. If the vessel was not under a profitable contract, the shipowner is normally entitled to the market value of the vessel at the time when and at the place where she was sunk², and interest on this until payment³. If the vessel was earning freight, the owner is entitled to the probable value of the ship at the end of her voyage, and of the freight which she would have earned on that voyage and under any further engagements contracted for, subject to proper allowances⁴. When a vessel is lost while proceeding in ballast to a loading port under a charterparty, the damages are measured in the same way⁵. If she was not a freight-earning vessel but was under other profitable contract, the owner is entitled to her value as a profit-earning vessel at the time and place of her loss⁶.

1 See *The Liesbosch, Dredger (owners) v Edison Steamship (owners)* [1933] AC 449, 18 Asp MLC 380, HL, disapproving the view stated in *The Columbus* (1849) 3 Wm Rob 158 at 164 (that, whether or not a ship was profit-earning, only the market value could be allowed). As to damages when the vessel is not lost see PARA 828.

2 *The Clyde* (1856) Sw 23. As to valuation in absence of market value see PARA 826.

3 *The Northumbria* (1869) LR 3 A & E 6 at 12, DC; *The Kong Magnus* [1891] P 223, 7 Asp MLC 64. In general, prospective earnings otherwise than under fixed engagements cannot be taken into account (*The Philadelphia* [1917] P 101, 14 Asp MLC 68, CA), but this rule has been held not to apply to a pleasure vessel employed on inland waters in one small defined area whose seasonable employment at scheduled rates could be fairly accurately determined by what actually occurred in the case of other craft belonging to the same owner (*The Fortunity Four of Hearts (Owners) v Fortunity (Owners)* [1960] 2 All ER 64, [1961] 1 WLR 351, [1960] 1 Lloyd's Rep 252). A bailee in possession is entitled to recover from a wrongdoer the market value of the chattel at the time of the loss, with interest from that date until payment: see *The Rosalind* (1920) 90 LJP 126. As to interest see further PARA 838.

4 *The Philadelphia* [1917] P 101, 14 Asp MLC 68, CA; and see *SS Baron Vernon v SS Metagama* 1927 SC 498 (10% off estimated profit deducted for contingencies); cf *The Northumbria* (1869) LR 3 A & E 6 at 12; *The Racine* [1906] P 273, 10 Asp MLC 300, CA; *The Empress of Britain* (1913) 29 TLR 423. References in these cases to the value of the vessel at the end of her voyage must be regarded merely as indicating that wear and tear during the voyage is to be taken into account: see *The Philadelphia* at 110-111 and 73. The value of prospective freights cannot, however, be simply added to the market value of the vessel as a free vessel, as the owner would then be getting his damages twice over: *The Liesbosch, Dredger (owners) v Edison Steamship (owners)* [1933] AC 449 at 454, 18 Asp MLC 380 at 383, HL. Where the market value allowed is based on that of a comparable vessel whose value is enhanced by the virtual certainty of future profitable employment, no further sum is allowable for future trading profits other than the profit which the vessel would have made if she had completed the voyage on which she was lost: *The Llanover* [1947] P 80, 80 Ll L Rep 433.

5 *The Kate* [1899] P 165, 8 Asp MLC 539, as explained in *The Philadelphia* [1917] P 101, 14 Asp MLC 68, CA.

6 *The Liesbosch, Dredger (owners) v Edison Steamship (owners)* [1933] AC 449, 18 Asp MLC 380, HL (where the measure of damages was held to be the value of the dredger, which was under a profitable contract, to the owners as a profit-earning dredger at the time and place of her loss; this included: (1) a capital sum covering the market value of a comparable substitute, costs of adaptation etc, and compensation for loss in carrying out the contract over period of delay, but excluding loss due to the financial poverty of the owners; and (2) interest on that capital from the date of the loss).

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826. Valuation in absence of market value.

In the absence of a market value for a vessel, the test is what she was fairly worth to her owners as a going concern at the time and place of the loss¹. The opinion of competent persons who knew the vessel is the best evidence of her value, but the evidence of professional valuers is also of weight. Elements to be considered in such a valuation are the original cost of the vessel, her age, her condition, the profits she earned² and the market price of similar vessels.

1 *The Harmonides* [1903] P 1; *The Liesbosch, Dredger (owners) v Edison Steamship (owners)* [1933] AC 449, 18 Asp MLC 380, HL. See also the salvage cases cited in PARA 976 note 1. As to the measure of damages in cases of total loss of vessel see PARA 825.

2 *The Iron-Master* (1859) Sw 441.

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827. Loss after collision.

There is no presumption of law that damage suffered by a vessel after a collision must be deemed to be the result of the collision unless the owner of the vessel whose negligence caused the collision proves the contrary¹.

However, in particular circumstances, damage, for example the stranding of the damaged vessel, may be of such a kind and follow so immediately on the collision that it is to be assumed that the damage was caused by the collision unless it is proved that there was some other cause². The cost of raising a vessel sunk in a harbour or river is recoverable as damages in a collision action if the authority has the power to charge the owners with the cost and if the charges are reasonable³. Although the principle of constructive total loss⁴ has no direct relation to collision liabilities, there may be cases where the proper mode of measuring the damages would be to assess them on the same basis as for a constructive total loss and then the defendant is entitled to the wreck⁵.

¹ As to negligence causing damage see PARA 785 et seq; and as to the burden of proof in collision cases see PARA 786 (negligence) and PARA 824 (damages).

² *The Paludina* [1925] P 40 at 48, 49, 16 Asp MLC 453 at 457, CA; affd sub nom *Singleton Abbey (Owners) v Paludina (Owners)*, *The Paludina* [1927] AC 16, 17 Asp MLC 117, HL. See also *The Mellona* (1847) 3 Wm Rob 7; *The Blenheim* (1854) 1 Ecc & Ad 285 (unreasonable abandonment); *The Linda* (1857) Sw 306 (salvage after improper abandonment); *The Pensher* (1857) Sw 211; *The Flying Fish* (1865) Brown & Lush 436 (where the partial damage became a total loss owing to the plaintiff's negligence, and the defendants were held liable for the partial damage); *The George and Richard* (1871) LR 3 A & E 466, 1 Asp MLC 50 (driving ashore and loss of life due to collision); *The Thuringia* (1872) 1 Asp MLC 283; *The Hansa* (1887) 6 Asp MLC 268; *The City of Lincoln* (1889) 15 PD 15, 6 Asp MLC 475, CA (stranding resulting from collision); *The Bruxellesville* [1908] P 312, 11 Asp MLC 24 (subsequent loss not due to collision); *The San Onofre* [1922] P 243, 16 Asp MLC 1, CA; *The Marigola* (1929) 34 Ll L Rep 217 (where subsequent stranding was due to the precipitate action of the master of the plaintiff's vessel); *The Steingrim* (1930) 37 Ll L Rep 284 (reasonable abandonment). See also *Temple Bar (Owners) v Guildford (Owners)*, *The Guildford* [1956] P 364, [1956] 2 All ER 915; *Mitera Marigo (Owners) v Fritz Thyssen (Owners)*, *The Fritz Thyssen* [1968] P 255 at 261n, [1967] 3 All ER 117n, [1967] 2 Lloyd's Rep 199, CA (where the sinking was not a direct result of the collision as assistance was refused). The defendants are entitled to a diminution of damages only if those in charge of the claimant's vessel were guilty of negligence, as opposed to mere error of judgment, amounting to a novus actus interveniens which caused the extra damage: see *SS Baron Vernon v SS Metagama* 1928 SC (HL) 21. As to reasonable human conduct not breaking the chain of causation see the cases cited in PARA 792 note 7; and **DAMAGES** vol 12(1) (Reissue) PARA 856.

³ *The Harrington* (1888) 13 PD 48, 6 Asp MLC 282; *The Emerald, The Greta Holme* [1896] P 192, 8 Asp MLC 138, CA (revsd on other grounds sub nom *No 7 Steam Sand Pump Dredger (Owners) v Greta Holme (Owners)*, *The Greta Holme* [1897] AC 596, 8 Asp MLC 317, HL); *The Wallesend* [1907] P 302, 10 Asp MLC 476; but see *Steamship Enterprises of Panama Inc, Liverpool (Owners) v Ousel (Owners)*, *The Liverpool (No 2)* [1963] P 64, [1960] 3 All ER 307, [1960] 2 Lloyd's Rep 66, CA (where a claim by an authority for removal expenses against the owners of a negligent ship was allowed and a claim by the owners of a wreck in respect of contingent statutory liability for wreck-saving expenses was disallowed). As to the power to raise vessels see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 691.

⁴ See **INSURANCE** vol 25 (2003 Reissue) PARA 468 et seq.

⁵ *The Columbus* (1849) 3 Wm Rob 158. See also *The Empress Eugenie* (1860) Lush 138.

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828. Vessel damaged but not lost.

When the ship is damaged but not lost¹, the damages recoverable generally consist of salvage² or towage³, repairs (including dock dues)⁴, crew's wages and other expenses of the vessel during repair, and loss of profit⁵. Where a ship has been temporarily repaired, and it is proved with reasonable certainty that, although permanent repairs have not been effected, they will be effected, her owners are entitled to recover a sum in respect of the prospective permanent repairs and of the prospective loss of time occupied in effecting them⁶.

Salvage expenses incurred by reason of a collision are recoverable from the wrongdoer⁷, as is towage⁸.

1 As to damages recoverable when the ship is lost see PARA 825.

2 As to salvage generally see PARA 876 et seq.

3 As to towage generally see PARA 587 et seq.

4 As to the cost of repairs see PARA 829.

5 As to the general principles governing the measure of damages see PARA 822.

6 *The Kingsway* [1918] P 344, 14 Asp MLC 509, CA.

7 *The Pensher* (1857) Sw 211; *The Williamina* (1878) 3 PD 97 at 99. The claimant's costs in the action against his vessel by the salvors are usually recoverable (*The Legatus* (1856) Sw 168); but see *The British Commerce* (1884) 9 PD 128, 5 Asp MLC 335 (where commission on bail was not recoverable).

8 *HMS Inflexible* (1857) Sw 200.

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829. Cost of repairs.

The owner is entitled to a complete repair of all the damage done, even though the result may be to render the vessel worth more than she was before the collision¹. The cost of the repairs recoverable is the cost at the nearest convenient port at which the repairs could have been executed². The owner is entitled to recover the cost of the repairs even though he does not actually repair the vessel³, or even though he sells her unrepaired to the shipbreakers⁴. The estimated cost of repairs is often the simplest way of calculating the loss which has to be made good⁵. The owner is not, however, entitled to the renewal of rotten parts discovered by the opening up for collision repairs, even though such parts might otherwise have lasted for years⁶.

1 *The Pactolus* (1856) Sw 173; *The Bernina* (1886) 6 Asp MLC 65. See also *The Kingsway* [1918] P 344, 14 Asp MLC 590, CA. The fees of a surveyor acting on behalf of a shipowner may be allowed even though he was engaged and paid by the insurers, but not fees for mere surveillance for them: *The Molière* [1925] P 27, 16 Asp MLC 470. As to interest see *The Napier Star* [1933] P 136, 18 Asp MLC 400; and PARA 838.

2 *Beucker v Aberdeen Steam Trawling and Fishing Co Ltd* 1910 SC 655; *The Admiralty v Aberdeen Steam Trawling and Fishing Co Ltd* 1910 SC 553. Damages may be awarded in the currency best compensating the claimant, having regard to the currency in which he generally operates or with which he has the closest connection: *Eleftherotria (Owners) v Despina R (Owners)*, *The Despina R* [1979] AC 685, [1979] 1 All ER 421, [1979] 1 Lloyd's Rep 1, HL.

3 *The Endeavour* (1890) 6 Asp MLC 511.

4 *The London Corpn* [1935] P 70, 18 Asp MLC 535, CA; *Porter v George Robb & Sons Ltd* 1961 SLT (Sh Ct) 14.

5 See generally PARA 822; and **DAMAGES** vol 12(1) (Reissue) PARA 862.

6 *The Princess* (1885) 5 Asp MLC 451.

UPDATE

829 Cost of repairs

NOTE 6--See also *Kamal XXVI (owners and/or demise charterers) v Vessel (owners)* [2009] EWHC 177 (Comm), [2009] All ER (D) 90 (Feb) (vessel in poor condition prior to collision).

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830. Dry-docking.

Dues paid for dry-docking a vessel for collision repairs are recoverable¹. Even where her owners take the opportunity to do other work on the vessel when the collision repairs are being done, the whole of the dock dues are recoverable from the wrongdoer, if the amount paid for the hire of the dock is not increased by the owners' work². If there are two collisions and the vessel would have had to be dry-docked for the damage caused by the first collision, and the repairs of the damage caused by the two collisions are carried out concurrently so that no extra dues become payable, it seems that the first wrongdoer only is liable for the dock dues³. Where neither the collision repairs nor the owners' repairs are immediately necessary, the cost of dry-docking must be apportioned⁴.

1 As to the measure of damages generally see PARA 822; and as to cost of repairs see PARA 829.

2 *Ruabon Steamship Co v London Assurance* [1900] AC 6, 9 Asp MLC 2, HL; *The Acanthus* [1902] P 17, 9 Asp MLC 276; cf *The Alfred* (1850) 3 Wm Rob 232 at 239; *Admiralty Comrs v SS Chekiang* [1926] AC 637, 17 Asp MLC 74, HL (damages for delay); *The Ferdinand Retzlaff* [1972] 2 Lloyd's Rep 120 (where the defendants were held not to be entitled to credit for the saving of time in bringing forward the special survey and owners' repairs to the time when the collision repairs were being carried out since these operations had not increased the cost of the collision repairs or the time occupied in them).

3 *Carslogie Steamship Co Ltd v Royal Norwegian Government* [1952] AC 292, [1952] 1 All ER 20, [1951] 2 Lloyd's Rep 441, HL, disapproving on this point *The Haversham Grange* [1905] P 307, 10 Asp MLC 156, CA.

4 *The Royal Fusilier* (1926) 25 Ll L Rep 566.

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831. Detention of ship.

The shipowner is entitled to the expenses of detention of his vessel¹, and the amount of profit lost². Both these heads of damages depend on time, and the shipowner is only entitled to such period of time as is shown to have been necessary allowing for reasonable dispatch³. Where there have been two collisions, and the second collision has caused no extra detention beyond what would have been caused by the first, the second wrongdoer is not liable for any part of the loss caused by the detention⁴. The wrongdoer is not liable if the detention would in any case have been necessary owing to weather damage suffered by the claimant's vessel after the collision⁵.

1 *HMS Inflexible* (1857) Sw 200. As to the expenses of detention see PARA 832.

2 *HMS Inflexible* (1857) Sw 200; *HMS London* [1914] P 72, 12 Asp MLC 405 (cited in PARA 822 note 5). As to the loss of profits caused by detention see PARA 833. Where there neither has been nor can be detention during repairs, the owner suffers no loss by reason of detention: see *The Glenfinlas* [1918] P 363n, 14 Asp MLC 594n (ship lost) (approved in *The Kingsway* [1918] P 344, 14 Asp MLC 590, CA; and in *The York* [1929] P 178, 17 Asp MLC 600, CA (repairs effected during period when already prevented from trading by contract of sale requiring preparation of ship for inspection; no loss due to detention)). Damages have been held to be recoverable for loss of time waiting for the next convoy in time of war (*The Veraston* [1920] P 12, 14 Asp MLC 595), but not damages for delay caused by a government order unconnected with the collision (*The Charles le Borgne* [1920] P 15 note 1; *The Kafue* [1920] P 15 note 2). As to the measure of the loss in case of a non-trading vessel, eg one owned by a foreign state or public authority, see PARA 835.

3 *The City of Buenos Aires* (1871) 1 Asp MLC 169; *The Ferdinand Retzlaff* [1972] 2 Lloyd's Rep 120. The fact that the owners take the opportunity of the period of detention to do other repairs which have not actually become a necessity is no ground for reducing the wrongdoer's liability: *Admiralty Comrs v SS Chekiang* [1926] AC 637, 17 Asp MLC 74, HL.

4 *The Haversham Grange* [1905] P 307, 10 Asp MLC 156, CA, approved on this point in *Carslogie Steamship Co Ltd v Royal Norwegian Government* [1952] AC 292, [1952] 1 All ER 20, [1951] 2 Lloyd's Rep 441, HL. Where the claimant loses a government subsidy as a result of the detention, this is part of his loss: *The Daressa* [1971] 1 Lloyd's Rep 60. As to the determination of liability when more than one party is at fault see PARAS 796-799.

5 *Carslogie Steamship Co Ltd v Royal Norwegian Government* [1952] AC 292, [1952] 1 All ER 20, [1951] 2 Lloyd's Rep 441, HL. If there is an intention, even without a final decision, to carry out repairs rendered necessary before the collision took place, the time which would have been spent on them is excluded: *The Hassel* [1962] 2 Lloyd's Rep 139.

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832. Expenses of detention.

The burden of proving that there has been any loss by detention rests on the claimant¹. Two things are necessary, namely loss and reasonable proof of the amount². The ordinary expenses of a vessel in port are allowed, including the master's and crew's wages and maintenance where necessarily incurred, fuel and stores consumed, and other matters³. It may, however, be that the insurance premium, if the vessel is long in port, will be subject to a deduction⁴.

1 *Strathfillan (Owners) v Ikala (Owners)* [1929] AC 196 at 209, 17 Asp MLC 555 at 560, HL. As to the burden of proof see PARA 786 (negligence); and PARA 824 (damages). As to liability for detention see PARA 831.

2 *The Clarence* (1850) 3 Wm Rob 283 at 286. As to loss of profits see PARA 833.

3 Cf eg *Admiralty Comrs v SS Chekiang* [1926] AC 637, 17 Asp MLC 74, HL; *The Hebridean Coast, Lord Citrine (Owners) v Hebridean Coast (Owners)* [1961] AC 545, [1961] 1 All ER 82, [1960] 2 Lloyd's Rep 423, HL (cited in PARA 835 note 3); *The Ferdinand Retzlaff* [1972] 2 Lloyd's Rep 120.

4 As to marine insurance see **INSURANCE** vol 25 (2003 Reissue) PARA 215 et seq.

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833. Loss of profits by detention.

A ship is a thing by the use of which money may ordinarily be earned, and, for the purpose of determining what profits, if any, were lost by detention, the question is what use the shipowner would, but for the collision, have had of his ship, and what profits would have been earned by such use, excluding elements of uncertain or speculative or special character¹. Where the ship is under a charterparty² which is lost in consequence of the collision, the charterparty is admissible evidence to prove that the ship has been thrown out of employment, but, in the absence of any charterparty, other evidence may equally establish the loss of employment³.

Where there is a charterparty for the voyage, this may afford a measure of the profits lost, although there is no rigid rule that the calculation is to be based on the charterparty current at the date of the collision; where there is no charterparty but a reasonable certainty of employment⁴, the matter is more at large⁵. The usual evidence given is as to the two or three previous voyages of the vessel⁶, and sometimes as to a subsequent voyage.

Damages are not necessarily confined to loss of profits during the actual period during which the ship is laid up for repairs but may include loss of earnings under any engagement for a future voyage which she had secured at the time of the collision⁷.

The loss of profit may consist of a loss of profit on the sale of goods which the owner would have carried in his vessel⁸. A fishing vessel has been allowed damages for loss due to interruption of fishing, as proved by the catches made by other vessels⁹; and a whaling vessel which loses her season is as much entitled to recover for her loss of employment as a vessel carrying cargo¹⁰. Loss of fishing in general, however, has been held to be too problematical¹¹. In all cases of loss of employment proper deductions must be made from the gross amount which would have been earned, for the expenses which would have been incurred in earning it¹², and the saving of wear and tear to the vessel¹³.

1 *The Argentino* (1888) 13 PD 191 at 201, 6 Asp MLC 348 at 351, CA; affd (1889) 14 App Cas 519, 6 Asp MLC 433, HL. As to foreseeability as a requirement for damages see PARA 822; as to liability for detention see PARA 831; and as to the expenses of detention see PARA 832.

2 As to charterparties generally see **CARRIAGE AND CARRIERS**.

3 *The Argentino* (1888) 13 PD 191 at 202, 6 Asp MLC 348 at 352, CA (affd (1889) 14 App Cas 519, 6 Asp MLC 433, HL); *The Hebridean Coast, Lord Citrine (Owners) v Hebridean Coast (Owners)* [1961] AC 545 at 563, [1960] 2 All ER 85 at 95, [1960] 1 Lloyd's Rep 227 at 240, CA, per Devlin LJ (affd [1961] AC 545 at 570, [1961] 1 All ER 82, [1960] 2 Lloyd's Rep 423, HL).

4 It has been suggested that it would now be sufficient to show merely a probability of earning a profit: *The Hebridean Coast, Lord Citrine (Owners) v Hebridean Coast (Owners)* [1961] AC 545 at 562, [1960] 2 All ER 85 at 94, [1960] 1 Lloyd's Rep 227 at 239, CA (affd [1961] AC 545 at 570, [1961] 1 All ER 82, [1960] 2 Lloyd's Rep 423, HL).

5 *The Argentino* (1888) 13 PD 191 at 203, 6 Asp MLC 348 at 352, CA (affd (1889) 14 App Cas 519, 6 Asp MLC 433, HL); *The Soya* [1956] 2 All ER 393, [1956] 1 Lloyd's Rep 557, sub nom *Dirphys (Owners) v Soya (Owners)*, *The Soya* [1956] 1 WLR 714, CA; and see *Re Mersey Docks and Harbour Board and Admiralty Comrs* [1920] 3 KB 223, 15 Asp MLC 24, DC; *Admiralty Comrs v SS Valeria (Owners)* [1922] 2 AC 242, 16 Asp MLC 25, HL (where charterers were allowed loss of profits on commercial freight plus working expenses instead of actual out-of-pocket expenses, which included cost of hire, cases of non-freight-earning vessels being distinguished); *Vitruvia Steamship Co Ltd v Ropner Shipping Co Ltd* 1923 SC 574 (affd 1925 SC (HL) 1) (where damages were allowed at

an agreed-on daily rate although the vessel had been able to complete her voyage under her charterparty and although no specific loss due to the delay had been proved); *The Soya* (where the vessel duly completed her current charterparty, but was delayed in reaching the Far East where at the time exceptionally high freight rates prevailed; loss of profits through delay in reaching the Far East were speculative, and the loss was held to be rightly assessed by reference to the profits being earned at the time of the collision); *Owners of the Ship Front Ace v Owners of the Ship Vicky 1* [2008] EWCA Civ 101, [2008] 2 All ER (Comm) 42 (no binding authority for the proposition that the 'ballast/laden' basis is the appropriate methodology to be adopted in all cases where a claimant loses a fixture as a result of a collision; calculation of loss of profit depends upon the facts of the particular case). A useful but not obligatory way of assessing damage where there is no charterparty is to take (subject to an allowance for contingencies if need be) an appropriate rate of hire for the period, to deduct the cost of earning the hire so far as not incurred and to award the balance: *The Hebridean Coast, Lord Citrine (Owners) v Hebridean Coast (Owners)* [1961] AC 545 at 563, [1960] 2 All ER 85 at 95, [1960] 1 Lloyd's Rep 227 at 239, CA (affd [1961] AC 545 at 570, [1961] 1 All ER 82, [1960] 2 Lloyd's Rep 423, HL).

6 Cf *The Hebe* (1847) 2 Wm Rob 530 at 536.

7 *The Argentino* (1889) 14 App Cas 519, 6 Asp MLC 433, HL; *The Soya* [1956] 2 All ER 393, [1956] 1 Lloyd's Rep 557, sub nom *Dirphys (Owners) v Soya (Owners)*, *The Soya* [1956] 1 WLR 714, CA.

8 *Strathfillan (Owners) v Ikala (Owners)* [1929] AC 196, 17 Asp MLC 555, HL (where, on a reference to assess damages (reported sub nom *The Ikala* (1929) 35 Ll L Rep 191, CA), the Court of Appeal refused to interfere with a calculation based on the cost of hiring a similar ship, even though it did not appear that any ship had been hired to replace the damaged ship, since the damages awarded were not on any basis of calculation excessive). For comment on this case see *The Hebridean Coast, Lord Citrine (Owners) v Hebridean Coast (Owners)* [1961] AC 545, [1961] 1 All ER 82, [1960] 2 Lloyd's Rep 423, HL.

9 *The Risoluto* (1883) 8 PD 109, 5 Asp MLC 93.

10 *The Argentino* (1888) 13 PD 191 at 202, 6 Asp MLC 348 at 352; affd sub nom *Gracie (Owners) v Argentino (Owners)*, *The Argentino* (1889) 14 App Cas 519, 6 Asp MLC 433, HL.

11 *The Anselma de Larringa* (1913) 29 TLR 587.

12 *The Gazelle* (1844) 2 Wm Rob 279 at 284.

13 *The Star of India* (1876) 1 PD 466 at 472, 3 Asp MLC 261 at 263.

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834. Use of another vessel.

Where, in order to carry out a charterparty, the shipowner hires another vessel to take the place of the vessel detained, the amount paid for the hire of the substituted vessel generally constitutes the measure of his loss¹. Where the shipowner substitutes another vessel of his own for the vessel detained, he is entitled to be paid for reasonable losses thus incurred, but no compensation will be due for time during which the substituted vessel would have been unemployed².

1 *The Yorkshireman* (1827) 2 Hag Adm 30n; and see *The Tugela* (1913) 30 TLR 101 (addition for loss of use of damaged vessel beyond period of time of substituted vessel allowed). As to the right of shipowners not engaged in trading for profit to claim the cost of hiring see PARA 835. Even though there may be no sufficient positive evidence of any chartering effected for the purpose of supplying the loss of a particular ship, it seems that the circumstances proved may be such that a court may be justified in drawing the inference that a proportion of the chartered tonnage did in fact supply that loss: *Strathfillan (Owners) v Ikala (Owners)*, *The Ikala* [1929] AC 196 at 211, 17 Asp MLC 555 at 561, HL. Cf *The Hebridean Coast, Lord Citrine (Owners) v Hebridean Coast (Owners)* [1961] AC 545, [1961] 1 All ER 82, [1960] 2 Lloyd's Rep 423, HL (where such an inference could not be drawn). As to liability for detention see PARA 831; and as to the loss of profits see PARA 833.

2 *The Black Prince* (1862) Lush 568; *The City of Peking v Compagnie des Messageries Maritimes*, *The City of Peking* (1890) 15 App Cas 438, 6 Asp MLC 572, PC; *Andros Springs (Owners) v World Beauty (Owners)*, *The World Beauty* [1970] P 144, sub nom *The World Beauty, Owners of Steam Trawler Andros Springs v Owners of Steam Tanker World Beauty* [1969] 3 All ER 158, [1969] 1 Lloyd's Rep 350, CA.

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835. Damages recoverable by foreign state or public authority.

General damages are recoverable for loss of use of a vessel, although the owners are a foreign state, or a public authority which is not authorised to use it for profit like a private individual¹. There is no absolute rule as to the method of assessing such damages, which must depend on the facts of the case². In some cases, damages have been assessed on a percentage of the capital value of the ship³; in other cases, damages have been held to be assessable on the operating cost or the cost of maintaining a spare ship⁴. Where another vessel has been hired to do the work of the damaged vessel, the owners of the damaged vessel may claim as special damages the cost of hiring, even though they are not engaged in trading for profit⁵.

1 *No 7 Steam Sand Pump Dredger (Owners) v Greta Holme (Owners), The Greta Holme* [1897] AC 596, 8 Asp MLC 317, HL; *Mediana (Owners) v Comet (Owners, Master and Crew), The Mediana* [1900] AC 113, 9 Asp MLC 41, HL; *Mersey Docks and Harbour Board v Marpessa (Owners)* [1907] AC 241, HL; *The Astrakhan* [1910] P 172, 11 Asp MLC 390; cf *The Bodlewell* [1907] P 286, 10 Asp MLC 479 (vessel worked at a loss for the time; damages not allowed, except expenses); and see **DAMAGES** vol 12(1) (Reissue) PARA 865. The principle extends to men-of-war: see eg *Admiralty Comrs v SS Chekiang* [1926] AC 637, sub nom *The Chekiang* 17 Asp MLC 74, HL. As to liability for detention see PARA 831; and as to loss of profits by detention see PARA 833.

2 *Admiralty Comrs v SS Chekiang* [1926] AC 637, sub nom *The Chekiang* 17 Asp MLC 74, HL; *Admiralty Comrs v Susquehanna (Owners), The Susquehanna* [1926] AC 655 at 662, 17 Asp MLC 81 at 83, HL; and see *Clyde Navigation Trustees v Bowring Steamship Co Ltd* 1929 SC 715 (hopper barge; allowed cost of reasonably efficient second-hand hopper barge, plus cost of adaptation for the special purpose for which it was intended, plus loss of use, plus interest); *The West Wales* [1932] P 165, 18 Asp MLC 349 (damage to warship; allowance to be made for use of Admiralty dry dock and cranes; as regards loss of use, the estimated life of the ship, annual depreciation and cost of maintenance must be considered); *The Luimneach* (1936) 54 Ll L Rep 5, CA. As to the general principles of assessing damages see PARA 822.

3 *Admiralty Comrs v SS Chekiang* [1926] AC 637, sub nom *The Chekiang* 17 Asp MLC 74, HL (5% on capital value, plus pay and allowances of officers and crew); *Admiralty Comrs v Susquehanna (Owners), The Susquehanna* [1926] AC 655 at 663, 664, 17 Asp MLC 81 at 84, HL (Admiralty oil tanker); *The Hebridean Coast, Lord Citrine (Owners) v Hebridean Coast (Owners)* [1961] AC 545, [1961] 1 All ER 82, [1960] 2 Lloyd's Rep 423, HL (collier of Central Electricity Generating Board; 7% on capital value allowed, plus allowances for depreciation, maintenance charges and consumption of stores).

4 *Mediana (Owners) v Comet (Owners), The Mediana* [1900] AC 113, 9 Asp MLC 41, HL (cost of maintaining spare lightship); *Mersey Docks and Harbour Board v Marpessa (Owners)* [1907] AC 241, HL (dredger; operating cost); and see *The Hebridean Coast, Lord Citrine (Owners) v Hebridean Coast (Owners)* [1961] AC 545, [1961] 1 All ER 82, [1960] 2 Lloyd's Rep 423, HL.

5 *Mersey Docks and Harbour Board v Marpessa (Owners)* [1907] AC 241 at 244, HL; and see *The Hebridean Coast, Lord Citrine (Owners) v Hebridean Coast (Owners)* [1961] AC 545, [1961] 1 All ER 82, [1960] 2 Lloyd's Rep 423, HL (where no specific vessel had been chartered as replacement tonnage). Cf *The St Charles* (1927) 17 Asp MLC 399, CA (where the plaintiffs were allowed (inter alia) a sum for loss of use of another vessel to which the cargo was transhipped). As to liability where another vessel has been hired to fulfil obligations see PARA 834. Even where it cannot be inferred that tonnage was chartered to replace the damaged vessel, it seems that there may be cases in which the owners of that vessel have been put to extra expenses and in which damages may appropriately be ascertained by reference to the sums which the owners of the damaged vessel were paying for chartered tonnage, less the expenses saved by not using the damaged vessel: see *The Hebridean Coast, Lord Citrine (Owners) v Hebridean Coast (Owners)* at 579, 86 and 428.

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836. Other expenses.

It seems that the shipowner can recover from the wrongdoer the whole of any general average expenses¹, notwithstanding the liability of the cargo owners for their share, although, if a cargo owner has an independent claim and exerts it in time in competition with the shipowner's claim, his claim will prevail². He can recover expenses which he has had to pay for repatriation of seamen if the law of the flag puts that burden on him³, and any special expenses which he has properly incurred to mitigate his loss⁴.

1 As to general average expenses see **CARRIAGE AND CARRIERS**.

2 *Morrison Steamship Co Ltd v Greystoke Castle (Cargo Owners)* [1947] AC 265, [1946] 2 All ER 696, HL, not approving *The Marpessa* [1891] P 403, 7 Asp MLC 155. As to the measure of damages see PARA 822; and as to cargo owner's loss see PARA 837.

3 *The Craftsman* [1906] P 153, 10 Asp MLC 274. Cf the Merchant Shipping Act 1995 ss 73-76 (see PARA 527 et seq).

4 Eg extra costs to save delay (*The Normandy* (1900) 16 TLR 567), but not pensions paid by way of gratuity for which the shipowner is not legally liable (*The Amerika* (1913) 12 Asp MLC 478; affd sub nom *Admiralty Comrs v SS Amerika* [1917] AC 38, 13 Asp MLC 558, HL). As to mitigation of loss see **DAMAGES** vol 12(1) (Reissue) PARA 1041 et seq.

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837. Cargo owner's loss.

A cargo owner who has lost his goods carried in one vessel in consequence of a collision due to the negligent navigation of another vessel¹ is, as a rule², entitled to recover from the owner of the other vessel the value of the goods at the place and time and in the state at and in which they ought to have been delivered to the cargo owner³. This value is the market price of the goods, if there is a market at that place. If not, such value has to be calculated, taking into account among other matters the cost price, the expenses of transit, and the importer's profit⁴. Wherever circumstances admit of calculations as to the time of arrival being made with reasonable certainty, damages for loss of market due to late delivery are recoverable⁵. Where general average expenses⁶ are incurred by the carrying vessel, a cargo owner has a direct right of action in respect of his contribution to such expenses against the owner of another vessel whose negligent navigation has caused or contributed to the collision⁷.

1 As to negligence giving rise to damage see PARA 785 et seq; and as to the right of cargo owners to recover see PARA 820.

2 As to the position where the vessel on which the cargo was carried is partly to blame for the collision see PARA 805.

3 As to the measure of damages for breach of contract see **CARRIAGE AND CARRIERS**.

4 *The Notting Hill* (1884) 9 PD 105 at 110, 5 Asp MLC 241 at 245, CA; cf *Rodocanachi v Milburn* (1886) 18 QBD 67, 6 Asp MLC 100, CA; *The Activ* (1901) 17 TLR 351 (the sound value at port of destination, after deducting proceeds of forced sale).

5 *Dunn v Bucknall Bros*, *Dunn v Donald Currie & Co* [1902] 2 KB 614 at 622, 623, 9 Asp MLC 336 at 339, CA; *Koufos v C Czarnikow Ltd*, *The Heron II* [1969] 1 AC 350, [1967] 3 All ER 686, [1967] 2 Lloyd's Rep 457, HL (fact that sugar prices fluctuate was known so that loss due to delay was foreseeable).

6 As to the nature of general average expenses see **CARRIAGE AND CARRIERS**.

7 *Morrison Steamship Co Ltd v Greystoke Castle (Cargo Owners)* [1947] AC 265, [1946] 2 All ER 696, HL; and see *The Toward* (1899) Shipping Gazette, 8 May; *The Minnetonka* [1905] P 206, 10 Asp MLC 142, CA (right to recover substituted expenses). The right to recover is subject to the statutory provisions as to apportionment of loss where both vessels are to blame: see *Morrison Steamship Co Ltd v Greystoke Castle (Cargo Owners)*; and see PARA 800 et seq.

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838. Interest.

Interest until payment is usually allowed on all claims proved, as being a part of the damages¹. If the ship is totally lost and is in ballast, interest generally runs from the date of her loss². If, however, she is without cargo but under charter and a sum in respect of freight is allowed, interest runs from the date at which she might be expected to receive the freight³, and, if she is loaded, interest runs from the date on which she would probably have ended her voyage and earned freight⁴. If the ship is damaged but not lost, interest is usually allowed from the date on which the repair bill is paid⁵.

1 *The Crathie* [1897] P 178, 8 Asp MLC 256; *The Kong Magnus* [1891] P 223, 7 Asp MLC 64; *The Joannis Vatis (No 2)* [1922] P 213, 16 Asp MLC 13; *The Berwickshire* [1950] P 204, [1950] 1 All ER 699 (where interest was allowed for the whole period between the collision and judgment although the plaintiff was an enemy alien for part of the period). Interest is not allowed on items of damage, eg estimated repairs and estimated demurrage in respect of which no expenditure or loss has yet been incurred: *The Napier Star* [1933] P 136, 64 Ll L Rep 197. As to the general discretion of all courts to award interest see **CIVIL PROCEDURE** vol 12 (2009) PARA 1149; **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1307; and as to the measure of damages generally see PARA 822.

2 *The Northumbria* (1869) LR 3 A & E 6. As to damages where the vessel is totally lost see PARA 825.

3 *The Kate* [1899] P 165, 8 Asp MLC 539.

4 *The Northumbria* (1869) LR 3 A & E 6. As to the payment of freight see **CARRIAGE AND CARRIERS**.

5 *The Hebe* (1847) 2 Wm Rob 530. As to damages where the vessel is not lost see PARA 828. Interest awarded by the Admiralty Court on damages for collision and included in the total award of damages is interest of money (see **INCOME TAXATION** vol 23(1) (Reissue) PARA 468): *The Norseman* [1957] P 224, [1957] 2 All ER 660, [1957] 1 Lloyd's Rep 503.

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(iii) Rights in rem and Rights in personam; Limitation of Time

839. Admiralty jurisdiction in rem and in personam.

The Admiralty jurisdiction of the High Court¹ extends to any claim for damage done by or received by a ship, any claim for loss of life or personal injury² in consequence of a defect in a ship or the wrongful act, neglect or default of her owners, charterers etc or of any persons for whom they are responsible, in her navigation or management, and any claim for loss of or damage to goods carried in a ship³.

An action in rem⁴ lies where there is a maritime lien or other charge on a ship⁵. Irrespective of the existence of such lien, if the claim arises in connection with a ship, and if the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or control of, the ship, an action in rem lies against that ship, or any other ship, if in either case at the time when the action is brought the ship is beneficially owned as respects all the shares in her by that person⁶.

An action in personam in respect of a claim for damage, loss of life or personal injury arising out of a collision between ships, or out of the carrying out or failure to carry out a manoeuvre by one or more of two or more ships, or out of non-compliance with the International Regulations for Preventing Collisions at Sea 1972⁷ by one or more of two or more ships, lies in a court in England or Wales only if the defendant has his habitual residence or place of business in England or Wales, or the cause of action arose within inland waters of England or Wales or the limits of a port there, or an action arising out of the same incident or series of incidents is proceeding, or has been determined, in the court⁸.

¹ As the Admiralty jurisdiction of the High Court see the Supreme Court Act 1981 ss 20-24; and PARA 85 et seq.

² As to damages for personal injuries see PARA 821.

³ See the Supreme Court Act 1981 s 20(1), (2)(d)-(g); and PARA 93 et seq. As to negligence in the construction of ships see PARA 788; as to negligence in navigation see PARA 789; as to the parties liable see PARA 808 et seq; and as to damage to cargo see PARAS 820, 837.

⁴ As to Admiralty actions in rem see PARA 92 et seq.

⁵ See the Supreme Court Act 1981 s 21(3); and PARA 93. A possessory lien by ship repairers is not an 'other charge': *Smith's Dock Co Ltd v St Merriel (Owners), The St Merriel* [1963] P 247, [1963] 1 All ER 537, [1963] 1 Lloyd's Rep 63.

⁶ See the Supreme Court Act 1981 s 21(4); and PARA 93. See also *Smith's Dock Co Ltd v St Merriel (Owners), The St Merriel* [1963] P 247, [1963] 1 All ER 537; *I Congreso del Partido* [1978] QB 500, [1978] 1 All ER 1169, [1977] 1 Lloyd's Rep 536 (revsd [1983] 1 AC 244, [1981] 2 All ER 1064, [1981] 2 Lloyd's Rep 367, HL). In the case of a ship chartered by demise, the demise charterer is the beneficial owner: *Medway Drydock and Engineering Co Ltd v MV Andrea Ursula, The Andrea Ursula* [1973] QB 265, [1971] 1 All ER 821, [1971] 1 Lloyd's Rep 145.

⁷ I.e the International Regulations for Preventing Collisions at Sea 1972 ('Collision Regulations 1972') (see PARA 720 et seq). As to the Collision Regulations 1972 see PARA 715. The Collision Regulations 1972 have force in the United Kingdom in the version, as amended, that is set out in Merchant Shipping Notice 1781(M), which,

together with the rules of the Collision Regulations 1972 referred to in it, form an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see PARA 715 note 9.

8 See the Supreme Court Act 1981 s 22(1), (2); and PARA 94. See also *Konstantinidis v World Tankers Corpn Inc, The World Harmony* [1967] P 341, sub nom *The World Harmony, Konstantinidis v World Tankers Corpn Inc* [1965] 2 All ER 139, [1965] 1 Lloyd's Rep 244.

UPDATE

839 Admiralty jurisdiction in rem and in personam

NOTES--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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840. Maritime lien.

There is a maritime lien¹ against a ship and her freight for all damage by collision done by that ship which is caused by the negligence of the employees, either of the owners² or of those in whom the control of the ship is vested with the consent of the owners, within the scope of their employment³. Every such lien may be carried into effect, when opportunity offers, by the arrest of the ship in an action in rem⁴.

The object is the satisfaction of the claim of the injured party out of the property seized, and, if the owners do not acknowledge service, the proceedings only enforce the lien against the property that is the subject of the claim (the res); but, if they do acknowledge service, the proceedings are a means of enforcing against them the complete claim⁵.

The maritime lien against the freight may be enforced by arrest of the cargo to make the owners pay the amount into court⁶.

A maritime lien exists against any vessel doing damage by collision⁷, and whether the collision was on the high seas or within the limits of a port⁸.

1 As to maritime liens see PARA 1014 et seq.

2 As to the vicarious liability of shipowners see PARA 809.

3 As to negligence causing damage see PARA 785 et seq; as to the incidence of liability see PARA 808 et seq; and as to liens for damage done by a ship see PARA 1017.

4 As to the procedure of arrest see PARA 161 et seq; and as to actions in rem for damage done by or to a ship see especially PARA 839.

5 *The Dictator* [1892] P 304 at 313, 320, 7 Asp MLC 251 at 254, 256; *The Gemma* [1899] P 285, 8 Asp MLC 585, CA; and see *The Dupleix* [1912] P 8, 12 Asp MLC 122; *The Joannis Vatis (No 2)* [1922] P 213, 16 Asp MLC 13; and PARA 92.

6 *The Flora* (1866) LR 1 A & E 45; *The Roecliff* (1869) LR 2 A & E 363 at 364; and as to freight cf *The Victor* (1860) Lush 72; *The Leo* (1862) Lush 444; *The Orpheus* (1871) LR 3 A & E 308. Freight collected and paid into a bank cannot be arrested, nor can a warrant be issued for the arrest of freight apart from the warrant to arrest the ship or cargo: *The Kaleten* (1914) 30 TLR 572. As to the lien on freight see PARA 1018.

7 *The Sarah* (1862) Lush 549 (vessel without masts or sails and usually propelled by a pole).

8 See *The Veritas* [1901] P 304 at 311, 9 Asp MLC 237 at 241.

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841. Limitation of time for proceedings.

An action to enforce any claim or lien against a ship¹ or her owners in respect of damage or loss caused by the fault of that ship to another ship, her cargo or freight or any property on board her, or for damages for loss of life or personal injury caused by the fault of that ship to any person on board another ship, must normally be begun within two years of the date when the damage or loss was caused or the loss of life or injury was suffered².

1 As to the meaning of 'ship' see PARA 229. As to maritime liens see PARA 1014 et seq.

2 See the Merchant Shipping Act 1995 s 190(1), (3); and PARA 1063. As to the time limit for proceedings for contribution founded on Admiralty jurisdiction see PARA 151; and as to the enforcement of maritime liens see PARA 1041 et seq. As to damages for personal injuries see PARA 821; and as to damages for loss of or damage to vessel see PARA 822 et seq.

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(8) COLLISION AS AFFECTING SALVAGE

842. Assistance after collision.

If salvage services¹ were rendered necessary by the faulty navigation of the salving vessel, it seems that neither the owner nor the crew can obtain a salvage reward². When two vessels have been in collision and are in danger from one another, and one of them is towed away from the other, salvage may be payable by both to the salvor³.

1 As to salvage generally see PARA 876 et seq.

2 See PARA 931. As to salvage reward see PARAS 903 et seq, 925.

3 *The Vandyck* (1881) 7 PD 42 (affd (1882) 5 Asp MLC 17, CA); *The Emilie Galline* [1903] P 106, 9 Asp MLC 401; *The Port Caledonia and The Anna* [1903] P 184, 9 Asp MLC 479. As to the measure of damages generally see PARA 822 et seq.

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843. Damage received during salvage.

When a vessel is damaged by collision without her own fault, while rendering salvage services¹, it is necessary to ascertain the amount of the damages sustained and to award this as part of the salvage remuneration, but, where this cannot be ascertained, the salvage award must be assessed on a liberal scale taking the damages sustained into account².

If the salving vessel negligently collides with and damages the vessel which she is salving, her owners do not necessarily forfeit their right to a salvage award, but they have to pay for the damage by the collision³. The owners of the salving vessel are liable for the damage caused, as the master was acting within the scope of his authority in attempting to save⁴.

The salvage expenses of a vessel damaged by collision through the negligence of another vessel, although ordinarily recoverable from the owners of the wrongdoing vessel⁵ cannot be recovered if the salvage is chargeable to improper abandonment⁶.

Where another vessel negligently collides with a wreck whilst salvors are in possession, the salvors are entitled to sue for damages done to it; the owners and salvors of the wreck between them are entitled to recover the whole value, such value being dependent on whether the salvage operations would have been successful⁷. A claim may be made for loss of salvage where a vessel engaged in performing salvage services is sunk by the negligence of another vessel⁸.

1 As to salvage see PARA 876 et seq.

2 *The Mud Hopper (No 4)* (1879) 4 Asp MLC 103; *The Sunnyside* (1883) 8 PD 137, 5 Asp MLC 140; *Baku Standard (Owners) v Angèle (Owners)* [1901] AC 549, 9 Asp MLC 197, PC. See further PARA 957.

3 See PARA 953. As to the measure of damages see PARA 822 et seq.

4 *The Thetis* (1869) LR 2 A & E 365. As to the vicarious liability of shipowners see PARA 809.

5 A probable but discretionary outlay for towage, if there had been no collision, cannot be deducted from the salvage expenses: see *HMS Inflexible* (1857) Sw 200.

6 *The Linda* (1857) Sw 306. As to intervention in the salvage action by the wrongdoer see *The Diana* (1874) 2 Asp MLC 366. As to whether costs in the salvage action are recoverable from the wrongdoer see *The Legatus* (1856) Sw 168; *The British Commerce* (1884) 9 PD 128, 5 Asp MLC 335.

7 *The Zelo* [1922] P 9, 15 Asp MLC 428.

8 *The Betsey Caines* (1826) 2 Hag Adm 28.

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9. ACCIDENT INVESTIGATIONS AND INQUIRIES

(1) MARINE ACCIDENT INVESTIGATIONS

(i) In general

844. Appointment of marine accident inspectors.

The Secretary of State¹ must, for the purpose of the investigation of any such accidents² as are mentioned in heads (1) and (2) below, namely³:

- 1029 (1) any accident involving a ship or ship's boat⁴ where, at the time of the accident, the ship is a United Kingdom ship⁵ or the ship (or, in a case of an accident involving a ship's boat, that boat) is within United Kingdom waters⁶; and
- 1030 (2) such other accidents involving ships or ships' boats as the Secretary of State may determine⁷,

appoint such number of persons as he may determine to be inspectors of marine accidents; and he must appoint one of those persons to be Chief Inspector of Marine Accidents⁸.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'accident' see PARA 846. See also note 4.

3 Merchant Shipping Act 1995 s 267(1). The text refers to any such accidents as are mentioned in s 267(2) (see heads (1) and (2) in the text): see s 267(1).

4 For these purposes, references to an accident involving a ship or ship's boat include references to an accident occurring on board a ship or ship's boat (and any reference to a ship or ship's boat involved in an accident is to be construed accordingly): Merchant Shipping Act 1995 s 267(10)(a). 'Ship's boat' includes a life-raft: s 267(10)(b). As to the meaning of 'ship' see PARA 229.

5 As to the meaning of 'United Kingdom ship' see PARA 230.

6 Merchant Shipping Act 1995 s 267(1), (2)(a). As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

7 Merchant Shipping Act 1995 s 267(1), (2)(b).

8 Merchant Shipping Act 1995 s 267(1). Any inspector of marine accidents has, for the purpose of discharging any functions conferred on him by or under s 267, the powers conferred on an inspector by s 259 (see PARA 49): s 267(8). Nothing in s 267 limits the powers of any authority under s 252 (see PARA 1008), s 253 (see PARA 1009) and s 254 (see PARA 1009): s 267(9). The Chief Inspector of Marine Accidents or, as the case may be, inspectors of marine accidents generally, must discharge such functions in addition to those conferred by or under s 267(1), (2) (see also the text and notes 1-7) and by or under s 267(3)-(6) (see PARA 845) as the Secretary of State may determine: s 267(7).

The Merchant Shipping Act 1995 s 267, and the regulations made thereunder, provide the foundation of the work conducted by the Marine Accident Investigation Branch, which is a branch within the Department for Transport, and whose structure and organisation follows the pattern of the Air Accident Investigation Branch (see **AIR LAW** vol 2 (2008) PARA 605) and the Rail Accident Investigation Branch (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 275 et seq).

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845. Secretary of State's power to make regulations with respect to the investigation of marine accidents.

The Secretary of State¹ may by regulations² make such provision as he considers appropriate with respect to the investigation of any accidents³ involving a ship⁴ or ship's boat⁵ where, at the time of the accident, the ship is a United Kingdom ship⁶ or the ship (or, in a case of an accident involving a ship's boat, that boat) is within United Kingdom waters⁷ or such other accidents involving ships or ships' boats as the Secretary of State may determine⁸. Any such regulations may in particular make provision⁹:

- 1031 (1) with respect to the definition of 'accident' for the purposes of the provisions relating to the investigation of marine accidents¹⁰ and the regulations¹¹;
- 1032 (2) imposing requirements as to the reporting of accidents¹²;
- 1033 (3) prohibiting, pending investigation, access to or interference with any ship or ship's boat involved in an accident¹³;
- 1034 (4) authorising any person, so far as may be necessary for the purpose of determining whether an investigation should be carried out, to have access to, examine, remove, test, take measures for the preservation of, or otherwise deal with, any such ship or boat or any other ship or ship's boat¹⁴;
- 1035 (5) specifying, with respect to the investigation of accidents, the functions of the Chief Inspector of Marine Accidents¹⁵ (which may include the function of determining whether, and if so by whom, particular accidents should be investigated), the functions of other inspectors of marine accidents, and the manner in which any such functions are to be discharged¹⁶;
- 1036 (6) for the appointment by the Chief Inspector of Marine Accidents, in such circumstances as may be specified in the regulations, of persons to carry out investigations under the provisions relating to the investigation of marine accidents¹⁷ who are not inspectors of marine accidents¹⁸;
- 1037 (7) for the appointment by any Minister of the Crown of persons to review any findings or conclusions of a person carrying out an investigation under the provisions relating to the investigation of marine accidents¹⁹;
- 1038 (8) for the procedure to be followed in connection with investigations or reviews under the provisions relating to the investigation of marine accidents²⁰;
- 1039 (9) for conferring on persons discharging functions under the regulations who are not inspectors of marine accidents all or any of the powers conferred on an inspector²¹;
- 1040 (10) for the submission to the Secretary of State, and the publication by him, of reports of investigations or reviews under the provisions relating to the investigation of marine accidents²²;
- 1041 (11) for the publication by the Chief Inspector of Marine Accidents of reports and other information relating to accidents²³.

Such regulations²⁴ may provide for any provisions of the regulations to apply to any specified class or description of incidents or situations which involve, or occur on board, ships or ships'

boats but are not accidents for the purposes of the regulations, being a class or description framed by reference to any of the following, namely²⁵:

- 1042 (a) the loss or destruction of or serious damage to any ship or structure²⁶;
- 1043 (b) the death of or serious injury to any person²⁷; or
- 1044 (c) environmental damage²⁸,

whether actually occurring or not, and, subject to such modifications as may be specified in the regulations, for those provisions to apply in relation to any such incidents or situations as they apply in relation to accidents²⁹.

Such regulations³⁰ may provide also that a contravention³¹ of the regulations is an offence punishable on conviction on indictment by a fine or on summary conviction by a fine not exceeding the statutory maximum³².

1 As to the Secretary of State see PARA 38.

2 As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41. The Secretary of State, in exercise of the powers conferred by s 267, has made the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881 (see PARA 847 et seq).

3 Ie any such accidents as are mentioned in the Merchant Shipping Act 1995 s 267(2) (see the text and notes 4-8): see s 267(3). As to the meaning of 'accident' for these purposes see PARA 846. See also PARA 844.

4 As to the meaning of 'ship' see PARA 229.

5 As to the meaning of references to an accident involving a ship or ship's boat, and as to the meaning of 'ship's boat' see PARA 844 note 4.

6 As to the meaning of 'United Kingdom ship' see PARA 230.

7 See the Merchant Shipping Act 1995 s 267(3), (2)(a). As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

8 See the Merchant Shipping Act 1995 s 267(3), (2)(b).

9 Merchant Shipping Act 1995 s 267(4).

10 Ie the Merchant Shipping Act 1995 s 267: see s 267(4)(a).

11 Merchant Shipping Act 1995 s 267(4)(a).

12 Merchant Shipping Act 1995 s 267(4)(b).

13 Merchant Shipping Act 1995 s 267(4)(c).

14 Merchant Shipping Act 1995 s 267(4)(d).

15 As to the appointment of inspectors of marine accidents and the Chief Inspector of Marine Accidents see PARA 844.

16 Merchant Shipping Act 1995 s 267(4)(e). The Chief Inspector of Marine Accidents or, as the case may be, inspectors of marine accidents generally, must discharge such functions in addition to those conferred by or under s 267(1), (2) (see PARA 844) and by or under s 267(3)-(6) as the Secretary of State may determine: s 267(7).

17 Ie the Merchant Shipping Act 1995 s 267: see s 267(4)(f).

18 Merchant Shipping Act 1995 s 267(4)(f).

19 Merchant Shipping Act 1995 s 267(4)(g). The text refers to a person carrying out an investigation under s 267: see s 267(4)(g).

20 Merchant Shipping Act 1995 s 267(4)(h). The text refers to investigations or reviews under s 267: see s 267(4)(h).

21 Merchant Shipping Act 1995 s 267(4)(i). The text refers to the powers conferred on an inspector by s 259 (see PARA 49): s 267(4)(i).

22 Merchant Shipping Act 1995 s 267(4)(j). The text refers to reports of investigations or reviews under s 267: see s 267(4)(j).

23 Merchant Shipping Act 1995 s 267(4)(k).

24 Ie regulations under the Merchant Shipping Act 1995 s 267: s 267(5).

25 Merchant Shipping Act 1995 s 267(5).

26 Merchant Shipping Act 1995 s 267(5)(a).

27 Merchant Shipping Act 1995 s 267(5)(b).

28 Merchant Shipping Act 1995 s 267(5)(c).

29 Merchant Shipping Act 1995 s 267(5).

30 Ie regulations under the Merchant Shipping Act 1995 s 267: s 267(6).

31 As to the meaning of 'contravention' see PARA 50 note 3.

32 Merchant Shipping Act 1995 s 267(6). As to the meaning of 'statutory maximum' see PARA 1099.

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846. Meaning of 'accident'.

For the purposes of those provisions of the Merchant Shipping Act 1995¹, and the regulations made thereunder², which govern the reporting and investigation of marine accidents, 'accident' means any occurrence on board a ship or involving a ship whereby³:

1045 (1) there is loss of life or major injury⁴ to any person on board, or any person is lost or falls overboard from, the ship or one of its ship's boats⁵;

1046 (2) the ship:

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108. (a) causes any loss of life, major injury or material damage⁶;

109. (b) is lost or is presumed to be lost⁷;

110. (c) is abandoned⁸;

111. (d) is materially damaged by fire, explosion, weather or other cause⁹;

112. (e) grounds¹⁰;

113. (f) is in collision¹¹;

114. (g) is disabled¹²; or

115. (h) causes significant harm to the environment¹³;

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1047 (3) any of the following occur:

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116. (a) a collapse or bursting of any pressure vessel, pipeline or valve¹⁴;

117. (b) a collapse or failure of any lifting equipment, access equipment, hatch-cover, staging or boatswain's chair or any associated load-bearing parts¹⁵;

118. (c) a collapse of cargo, unintended movement of cargo or ballast sufficient to cause a list, or loss of cargo overboard¹⁶;

119. (d) a snagging of fishing gear which results in the vessel heeling to a dangerous angle¹⁷;

120. (e) a contact by a person with loose asbestos fibre except when full protective clothing is worn¹⁸; or

121. (f) an escape of any harmful substance or agent¹⁹,

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1048 if the occurrence might have caused serious injury or damage to the health of any person²⁰.

For these purposes, 'major injury' means: (i) any fracture (other than to a finger, thumb or toe); (ii) any loss of a limb or part of a limb; (iii) dislocation of the shoulder, hip, knee or spine; (iv) loss of sight (whether temporary or permanent); (v) penetrating injury to the eye; or (vi) any other injury leading to hypothermia or to unconsciousness, or requiring resuscitation, or requiring admittance to a hospital or other medical facility as an in-patient for more than 24 hours²¹. 'Serious injury' means any injury, other than a major injury, to a person employed or carried in a ship which occurs on board or during access which results in incapacity²² for more than three consecutive days excluding the day of the accident, or as a result of which the person concerned is put ashore and the ship sails without that person, unless the incapacity is known or advised to be of three consecutive days or less, excluding the day of the accident²³.

- 1 le the Merchant Shipping Act 1995 s 267 (see PARAS 844, 845): see the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1).
- 2 le the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881 (see also PARA 847 et seq): see reg 3(1). As to the application of the regulations so made see PARA 847.
- 3 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1). In the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, 'accident' has the meaning given in reg 3: reg 2(1).
- 4 As to the meaning of 'major injury' for these purposes see the text and note 21.
- 5 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(a). For these purposes, 'ship's boat' includes a liferaft, painting punt and any boat normally carried by a ship: reg 2(1).
- 6 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(b)(i).
- 7 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(b)(ii).
- 8 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(b)(iii).
- 9 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(b)(iv).
- 10 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(b)(v). For these purposes, 'grounds' means making involuntary contact with the ground, except for touching briefly so that no damage is caused: reg 3(2).
- 11 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(b)(vi).
- 12 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(b)(vii). For these purposes, 'disabled' means not under command for a period of more than 12 hours, or for any lesser period if, as a result, the vessel needs assistance to reach port: see reg 3(2).
- 13 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(b)(viii).
- 14 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(c)(i).
- 15 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(c)(ii). For these purposes, 'access' means the process of embarking on or disembarking from a ship, by whatever means employed: reg 2(1).
- 16 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(c)(iii).
- 17 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(c)(iv).
- 18 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(c)(v).
- 19 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(c)(vi).
- 20 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(c). As to the meaning of 'serious injury' for these purposes see the text and notes 22-23.
- 21 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 2(1).
- 22 For these purposes, 'incapacity' means inability to undertake the full range of activities normally undertaken: Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 2(1).
- 23 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 2(1).

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(ii) Procedure

847. Application of provisions relating to the reporting and investigation of marine accidents.

The provisions relating to the reporting and investigation of marine accidents¹ apply to accidents involving or occurring on board²:

- 1049 (1) any United Kingdom ship³; and
- 1050 (2) any other ship within the United Kingdom or United Kingdom waters⁴.

The provisions relating to the reporting and investigation of marine accidents⁵ apply to serious injuries⁶ and hazardous incidents⁷ as they apply to accidents⁸.

However, an investigation may also be held⁹ into an accident involving or occurring on board a ship which is not a United Kingdom ship and which at the time of the accident was not within the United Kingdom or United Kingdom waters, if the Secretary of State¹⁰ so determines¹¹.

¹ I.e. the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881 (see also PARA 846 et seq): see reg 4(1). As to the meaning of 'accident' for these purposes see PARA 846.

² Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 4(1).

³ Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 4(1)(a). For these purposes, 'United Kingdom ship' means a ship registered in the United Kingdom or a ship that is not registered under the law of any state but is eligible for registration in the United Kingdom under the Merchant Shipping Act 1995: Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 2(1). As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the registration of ships in the United Kingdom under the Merchant Shipping Act 1995 see PARA 245 et seq.

Although head (1) in the text applies generally, the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6 (see PARA 849) does not apply in relation to:

983 (1) a pleasure vessel (reg 4(1)(a)(i));

984 (2) a recreational craft which is hired on a bareboat basis (reg 4(1)(a)(ii)); or

985 (3) any other craft or boat, other than one carrying passengers, which is in commercial use in a harbour or on an inland waterway and is less than eight metres overall in length (reg 4(1)(a)(iii)),

unless, in the case of a craft or boat mentioned in head (2) or head (3) above, the accident involves any of the following: explosion, fire, death, major injury, capsizing of a power-driven craft or boat, or pollution causing significant harm to the environment (see reg 4(1)(a)). As to the meaning of 'major injury' see PARA 846. For these purposes, 'hired on a bareboat basis' means hired without a professional master, skipper or crew: see reg 4(4). 'Pleasure vessel' means:

986 (a) any vessel which is wholly owned by an individual or individuals and used only for the sport or pleasure of the owner or the immediate family or friends of the owner, or is owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends; and is on a voyage or excursion which is one for which the owner is not paid for or in connection with operating the vessel or carrying any person, other

than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion; or

987 (b) any vessel wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of the club or their immediate family; and for the use of which any charges levied are paid into club funds and applied for the general use of the club; and

988 (c) in the case of any vessel referred to in head (a) or head (b) above, no payments other than those mentioned are made by or on behalf of the users of the vessel, other than by the owner;

and, for these purposes, 'immediate family' means, in relation to an individual, the spouse or civil partner of the individual, and a brother, sister, ancestor or lineal descendant of that individual or that individual's spouse or civil partner: reg 2(1).

4 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 4(1)(b). For these purposes, 'United Kingdom waters' means the sea or other waters within the seaward limits of the territorial sea of the United Kingdom: reg 2(1). As to the territorial sea generally see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 123.

Although head (2) in the text applies generally, reg 6 (see PARA 849) and reg 9(1)-(3) (see PARA 851) only apply in relation to such a ship as is mentioned in head (2) in the text if:

989 (1) the ship is within the jurisdiction of a harbour master or Queen's harbour master appointed, or required to be appointed, under any enactment (reg 4(1)(b)(i));

990 (2) the ship is employed in carrying passengers to or from a port in the United Kingdom or a place mentioned in head (1) above (reg 4(1)(b)(ii)); or

991 (3) an inspector, or other person acting on behalf of the Chief Inspector, requires that any of the evidence mentioned in reg 9(1), (2) be preserved (reg 4(1)(b)(iii)).

For these purposes, 'inspector' means an inspector of marine accidents appointed by the Secretary of State under the Merchant Shipping Act 1995 s 267(1) (see PARA 844) and in the context of the investigation or a particular accident includes any person appointed to investigate that accident under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(2) (see PARA 852): reg 2(1). 'Chief Inspector' means the Chief Inspector of Marine Accidents appointed by the Secretary of State under the Merchant Shipping Act 1995 s 267(1) (see PARA 844), and any Deputy Chief Inspector: Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 2(1).

5 I.e the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881 (see also PARA 846 et seq): see reg 4(2).

6 I.e except that the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6 (see PARA 849), with the exception of reg 6(5), and reg 9 (see PARA 851), do not apply to serious injuries: see reg 4(2)(a). As to the meaning of 'serious injury' see PARA 846.

7 I.e except that the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6 (see PARA 849) and reg 9 (see PARA 851), do not apply to hazardous incidents: see reg 4(2)(b). For these purposes, 'hazardous incident' means any event, other than an accident, associated with the operation of a ship which involves circumstances indicating that an accident nearly occurred: reg 2(1).

8 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 4(2).

9 I.e under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7 (see PARA 850): see reg 4(3).

10 As to the Secretary of State see PARA 38.

11 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 4(3).

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848. Objective of a marine investigation.

The sole objective of the investigation of an accident¹, under the provisions which govern the reporting and investigation of marine accidents², is the prevention of future accidents through the ascertainment of its causes and circumstances³. It is not the purpose of such an investigation to determine liability nor, except so far as is necessary to achieve the objective, to apportion blame⁴.

1 As to the meaning of 'accident' for these purposes see PARA 846.

2 Ie under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881 (see also PARAS 846, 847, 849 et seq): see reg 5(1). As to the application of the regulations generally see PARA 847.

3 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 5(1).

4 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 5(2).

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849. Duty to report accidents and serious injuries.

When an accident¹ occurs, the following persons associated with the ship must send a report to the Chief Inspector² as soon as is practicable following the accident and by the quickest means available³:

- 1051 (1) the master or, if he has not survived, the senior surviving officer⁴; and
- 1052 (2) the ship's owner⁵, unless he has ascertained to his satisfaction that the master or senior surviving officer has reported the accident in accordance with head (1) above⁶.

In addition to any report so made⁷, the following persons must report to the Chief Inspector as soon as is practicable and by the quickest means available any accident of which they are aware⁸:

- 1053 (a) in the case of an accident within or adjacent to the limits of any harbour, the harbour authority for that harbour⁹;
- 1054 (b) in the case of an accident on any inland waterway in the United Kingdom, the person, authority or body having responsibility for that waterway¹⁰; or
- 1055 (c) an official of the Maritime and Coastguard Agency¹¹ in respect of an accident within United Kingdom waters¹².

Any person making such a report to the Chief Inspector¹³ must, in so far as is practicable, include the following information¹⁴:

- 1056 (i) name of ship and its International Maritime Organisation¹⁵, official or fishing vessel number¹⁶;
- 1057 (ii) name and address of owner¹⁷;
- 1058 (iii) name of the master, skipper or person in charge¹⁸;
- 1059 (iv) date and time of the accident¹⁹;
- 1060 (v) where from and where bound²⁰;
- 1061 (vi) latitude and longitude or geographical position in which the accident occurred²¹;
- 1062 (vii) part of ship where accident occurred if on board²²;
- 1063 (viii) weather conditions²³;
- 1064 (ix) name and port of registry of any other ship involved²⁴;
- 1065 (x) number of people killed or injured, together with their names, addresses and gender²⁵;
- 1066 (xi) brief details of the accident (including, where known, the sequence of events leading to the accident, extent of damage and whether the accident caused pollution or a hazard to navigation)²⁶;
- 1067 (xii) if the ship is fitted with a voyage data recorder²⁷, the make and model of the recorder²⁸.

In addition to making any such report²⁹, the persons specified in heads (1) and (2) above, must, so far as is reasonably practicable, ensure that the circumstances of every accident are examined and that a report giving the findings of such examination, stating any measures taken or proposed to prevent a recurrence, must be provided to the Chief Inspector as soon as is practicable³⁰.

The master and ship's owner must, so far as is reasonably practicable, ensure also that the circumstances of every serious injury³¹ are examined and one of them must, within 14 days, provide the Chief Inspector with a report giving the findings of such examination and stating any measures taken or proposed to prevent a recurrence³².

1 As to the meaning of 'accident' for these purposes see PARA 846.

2 As to the meaning of 'Chief Inspector' see PARA 847 note 4.

3 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(1). However, reg 6 does not apply: (1) to an accident when the person killed or injured is a stevedore or shore-based worker and the accident occurs in a port in the United Kingdom (reg 6(6)(a)); or (2) to an accident which occurs in a shipyard in the United Kingdom (reg 6(6)(b)). As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the application of the regulations generally see PARA 847; and as to the application of reg 6 in particular see PARA 847 notes 3-4, 6-7.

4 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(1)(a). For these purposes, 'senior surviving officer' means the senior surviving officer in the deck department and, if there is no surviving officer in the deck department, the senior surviving engineer officer: reg 2(1).

5 Where a ship is managed by a person other than her owner (whether on behalf of the owner or some other person, or on his own behalf), a reference in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, to the owner is to be construed as including a reference to that person: reg 2(2).

6 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(1)(b).

7 *Ie* under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(1) (see the text and notes 1-6): see reg 6(2).

8 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(2).

9 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(2)(a).

10 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(2)(b).

11 As to the Maritime and Coastguard Agency see PARA 56.

12 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(2)(c). As to the meaning of 'United Kingdom waters' see PARA 847 note 4.

13 *Ie* pursuant to either the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(1) (see the text and notes 1-6) or reg 6(2) (see the text and notes 7-12): see reg 6(3).

14 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(3).

15 As to the International Maritime Organisation see PARA 13.

16 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(3)(a).

17 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(3)(b).

18 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(3)(c).

19 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(3)(d).

20 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(3)(e).

21 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(3)(f).

- 22 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(3)(g).
- 23 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(3)(h).
- 24 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(3)(i).
- 25 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(3)(j).
- 26 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(3)(k).
- 27 For these purposes, 'Voyage data recorder' means the electronic or mechanical equipment which may be installed on a ship to record key navigational and control information: Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 2(1).
- 28 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(3)(l).
- 29 le under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(1)-(3) (see the text and notes 1-28): see reg 6(4).
- 30 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(4).
- 31 As to the meaning of 'serious injury' see PARA 846.
- 32 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(5).

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850. Ordering of investigations and reopening of investigations into marine accidents.

The Chief Inspector¹ may cause any accident² to be investigated³.

Where a report has been duly received, pursuant to the duty imposed on certain persons to report accidents and serious injuries⁴, the Chief Inspector must decide whether or not an investigation, including any preliminary examination⁵, should be carried out and must notify the parties to the accident of his decision within 28 days following receipt by him of the report⁶.

Before deciding whether an investigation should be carried out (and, if so, what form it should take), the Chief Inspector may cause to be obtained such information as he considers necessary concerning the accident and any remedial action taken as a result⁷; and any person on whom the duty to report has been imposed⁸ (as well as any other person who is in possession of it and has been requested to do so by an inspector⁹) must provide such information to the best of their ability and knowledge¹⁰.

In the case of an accident where there is loss of life or major injury¹¹ to any person on board, or where any person is lost or falls overboard from, the ship or one of its ship's boats¹², the Chief Inspector may decide not to carry out an investigation if he is satisfied, or it is otherwise established to his satisfaction, that¹³: (1) any loss of life resulted from suicide or natural causes¹⁴; or (2) any major injury resulted from attempted suicide¹⁵. In such circumstances, he may discontinue any investigation which has already been commenced¹⁶.

Public notice that an investigation has been commenced may be given in such manner as the Chief Inspector may think fit, and he may invite any persons who so desire to present relevant evidence to the inspector in such a manner and within such a time as is specified in the notice¹⁷.

The Secretary of State¹⁸ may require the Chief Inspector to investigate any accident or to expand the scope of an investigation to include any further consequences of an accident¹⁹, including: (a) salvage and pollution aspects²⁰; or (b) the conduct of search and rescue operations²¹. In such circumstances, the Chief Inspector may conduct an investigation into the further consequences of an accident which may be separate and distinct from the investigation into the initial accident²².

Notwithstanding a decision by the Chief Inspector²³ not to investigate, he may at any subsequent time cause an investigation to be carried out if he is then satisfied there is good reason in the interests of future safety to do so²⁴.

The Chief Inspector may cause any investigation to be re-opened if, following its completion, in his opinion new and important evidence is discovered which could have a material effect on any safety recommendations made²⁵.

Any investigation may be re-opened either in whole or as to any part of it and a re-opened investigation is subject to, and must be conducted in accordance with, the standard provisions governing such investigations²⁶.

1 As to the meaning of 'Chief Inspector' see PARA 847 note 4.

2 As to the meaning of 'accident' see PARA 846.

3 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(1). As to the application of the regulations generally see PARA 847; and as to penalties for contravention see PARA 1198.

4 Ie where a report has been received under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(1)-(2), (4)-(5) (see PARA 849): see reg 7(2). As to the meaning of 'serious injury' see PARA 846.

5 For these purposes, 'preliminary examination' means the initial part of an investigation which may be held to establish the causes and circumstances of an accident with a view to deciding whether any further investigation is warranted: Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 2(1).

6 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(2).

7 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(3).

8 Ie any person mentioned in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(1) or reg 6(2) (see PARA 849): see reg 7(3).

9 As to the meaning of 'inspector' see PARA 847 note 4.

10 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(3).

11 As to the meaning of 'major injury' see PARA 846.

12 Ie in the case of an accident to which the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 3(1)(a) applies (see PARA 846): see reg 7(4). As to the meaning of 'ship's boat' see PARA 846 note 5.

13 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(4).

14 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(4)(a).

15 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(4)(b).

16 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(4).

17 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(5).

18 As to the Secretary of State see PARA 38.

19 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(6).

20 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(6)(a).

21 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(6)(b).

22 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(6).

23 Ie under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(2) (see the text and notes 4-6): see reg 8(1).

24 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 8(1).

25 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 8(2).

26 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 8(3). The text refers to the provisions of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881: see reg 8(3).

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851. Preservation of evidence relevant to investigation of marine accidents.

Following an accident¹ involving a United Kingdom ship² which is reportable³, the following persons⁴, namely: (1) the master (or, if he has not survived, the senior surviving officer)⁵; and (2) the ship's owner⁶ (unless he has ascertained to his satisfaction that the master or senior surviving officer has duly reported the accident)⁷, must so far as is practicable ensure that all⁸:

- 1068 (a) charts⁹;
- 1069 (b) log books¹⁰;
- 1070 (c) electronic and magnetic recording and video tapes, including information from a voyage data recorder¹¹ or recording system relating to the period preceding, during and after the accident¹²; and
- 1071 (d) all documents or other records which might reasonably be considered pertinent to the accident¹³,

are kept and that no alteration is made to any recordings or entries in them¹⁴.

In the case of an accident involving a United Kingdom ship, the persons specified in heads (1) and (2) above must also ensure that¹⁵:

- 1072 (i) all information from a voyage data recorder or recording system relating to the circumstances of an accident is saved and preserved, in particular by taking steps, where necessary, to prevent such information from being overwritten¹⁶; and
- 1073 (ii) any other equipment which might reasonably be considered pertinent to the investigation of the accident is so far as practicable left undisturbed¹⁷.

The duty to ensure that documents, information or records are kept and not altered¹⁸ and to ensure that information is saved and preserved, or that equipment is left undisturbed¹⁹, continues until²⁰:

- 1074 (A) notification is received from the Chief Inspector²¹ that no investigation is to take place or that the investigation has been completed²²;
- 1075 (B) 28 days have passed since the Chief Inspector received an accident report²³ and no notice has been sent by the Chief Inspector that he has decided to investigate the matter²⁴; or
- 1076 (C) the Chief Inspector or an inspector²⁵ carrying out the investigation gives written notification that he no longer requires them²⁶.

Following an accident in United Kingdom waters²⁷ involving a ship which is not a United Kingdom ship, the persons mentioned in heads (1) and (2) above must comply with the duty to ensure that documents, information or records are kept and not altered²⁸, or to ensure that information is saved and preserved, or that equipment is left undisturbed²⁹, if requested to do so by or on behalf of the Chief Inspector³⁰.

An inspector may, pending investigation, prohibit persons from gaining access to, or interfering with, any ship, ship's boat³¹ or other equipment involved in an accident³². Following an accident,

the Chief Inspector may, if he considers it reasonably necessary for the collection or preservation of evidence in connection with any investigation (including preliminary examination³³) relating to the accident, require any of the master (or, if he has not survived, the senior surviving officer) and the ship's owner to ensure that a ship is accessible within United Kingdom waters to any inspector engaged in the investigation of such accident, until the process of collecting or preserving the evidence has been completed to the inspector's satisfaction³⁴. However, the Chief Inspector must not require a ship to remain in United Kingdom waters any longer than is necessary for the collection or preservation, as the case may be, of such evidence and must take all reasonable steps to ensure that such evidence is collected or preserved expeditiously³⁵; and no such requirement is to be made unless the Chief Inspector has reasonable grounds for concern that if the ship leaves United Kingdom waters, access to it, to any member of the crew, or to any evidence on board relating to the investigation, may subsequently be denied to him or any inspector conducting such investigation³⁶.

1 As to the meaning of 'accident' see PARA 846.

2 As to the meaning of 'United Kingdom ship' see PARA 847 note 3.

3 Ie under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6 (see PARA 849): see reg 9(1). As to the application of the regulations generally see PARA 847; and as to the application of reg 9 in particular see PARA 847 notes 4, 6-7. As to penalties for contravention see PARA 1198.

4 Ie the persons mentioned in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(3) (see heads (1) and (2) in the text): see reg 9(1).

5 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(3)(a). As to the meaning of 'senior surviving officer' see PARA 849 note 4.

6 As to the meaning of references to the owner see PARA 849 note 5.

7 See the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(3)(b).

8 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(1).

9 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(1)(a).

10 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(1)(b).

11 As to the meaning of 'voyage data recorder' see PARA 849 note 27.

12 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(1)(c).

13 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(1)(d).

14 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(1).

15 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(2).

16 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(2)(a).

17 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(2)(b).

18 Ie under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(1) (see the text and notes 1-14): see reg 9(4).

19 Ie under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(2) (see the text and notes 15-17): see reg 9(4).

20 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(4).

21 As to the meaning of 'Chief Inspector' see PARA 847 note 4.

- 22 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(4)(a).
- 23 Is the report referred to in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(1) (see PARA 849): see reg 9(4)(b).
- 24 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(4)(b).
- 25 As to the meaning of 'inspector' see PARA 847 note 4.
- 26 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(4)(c).
- 27 As to the meaning of 'United Kingdom waters' see PARA 847 note 4.
- 28 Is the requirements of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(1) (see the text and notes 1-14): see reg 9(5).
- 29 Is the requirements of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(2) (see the text and notes 15-17): see reg 9(5).
- 30 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(5).
- 31 As to the meaning of 'ship's boat' see PARA 846 note 5.
- 32 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(6).
- 33 As to the meaning of 'preliminary examination' see PARA 850 note 5.
- 34 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(7).
- 35 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(8).
- 36 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(9).

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852. Conduct of investigations into marine accidents.

If the Chief Inspector¹ decides² that an investigation must be carried out, it must be undertaken by one or more inspectors³ at such times and places and in such manner as appear to them most conducive to achieving the sole objective⁴ of the investigation⁵. The Chief Inspector may also appoint one or more persons who are not inspectors appointed under the Merchant Shipping Act 1995⁶ for the purpose of carrying out an investigation in circumstances where such appointed inspectors are not conveniently available or where the persons appointed have special qualifications or experience⁷. Where an investigation involves a ro-ro ferry or high speed passenger craft which has been subject to a mandatory survey for its safe operation⁸, the Chief Inspector must enable a substantially interested state⁹ which is an EEA state¹⁰ to participate or co-operate in the investigation in accordance with the International Maritime Organisation Code¹¹.

An investigation may extend to cover all events and circumstances preceding the accident together with subsequent events and circumstances which in the opinion of an inspector may have been relevant to its cause or outcome¹².

Every person required to attend before an inspector must be allowed the reasonable expenses of attending, payable by the Secretary of State¹³.

Any person (not being a solicitor or other professional legal adviser acting solely on behalf of the person required to attend)¹⁴ who has been allowed by an inspector to be present¹⁵, or who has been nominated to be present by a person required to attend¹⁶, at an oral examination before an inspector, may at any time be excluded from being present by the inspector with the agreement of the Chief Inspector¹⁷, if:

- 1077 (1) both the inspector and Chief Inspector have substantial reason to believe that his presence would hamper the investigation with the result that the sole objective is likely to be hindered and future safety thereby endangered¹⁸; and
- 1078 (2) the Chief Inspector is satisfied, having regard to all the circumstances, that it is proper to exclude that person¹⁹.

Where a person nominated to be present has been excluded in this way, the person required to attend is entitled to nominate another person to be present at the oral examination in place of the excluded person and the same conditions as to their continued presence then apply to that other person²⁰.

Any document, record or information that is required to be preserved²¹, properly required by an inspector to be produced for the purposes of an investigation (whether on board the ship involved or otherwise), may be retained by him until the investigation is completed²².

In relation to any investigation:

- 1079 (a) where a preliminary examination²³ has been conducted, the Chief Inspector must decide (having regard to the sole objective) whether it is appropriate in all the circumstances to conduct further investigation leading to publication of a report²⁴;
- 1080 (b) the Chief Inspector may subsequently decide to discontinue the investigation at any time and must make his reasons for doing so publicly available²⁵.

- 1 As to the meaning of 'Chief Inspector' see PARA 847 note 4.
- 2 le pursuant to the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(1) (see PARA 850): see reg 10(1). As to the application of the regulations generally see PARA 847; and as to penalties for contravention see PARA 1198.
- 3 As to the meaning of 'inspector' see PARA 847 note 4.
- 4 le as set out in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 5 (see PARA 848): see reg 10(1).
- 5 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(1).
- 6 le under the Merchant Shipping Act 1995 s 267 (see PARA 844): see the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(2).
- 7 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(2). Such persons appointed as mentioned in the text have the powers conferred on an inspector by the Merchant Shipping Act 1995 s 259 (see PARA 49) and s 267(8) (see PARA 844): see the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(2).
- 8 le a ro-ro ferry or high speed passenger craft to which EC Council Directive 1999/35 of 29 April 1999 (OJ L138, 01.06.1999, p 1) on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (amended by EC Directive 2002/84 of the European Parliament and of the Council of 5 November 2002 (OJ L324, 29.11.2002, p 53)) applies (see PARA 603): see the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 11(1). Accordingly, for these purposes, 'ro-ro ferry' and 'high speed passenger craft' have the meanings given to them by EC Council Directive 1999/35 (OJ L138, 01.06.1999, p 1): see the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 11(2).
- 9 For these purposes, 'substantially interested state' has the meaning given by the IMO Code; and 'IMO Code' means the Code for the Investigation of Marine Casualties and Incidents adopted by the International Maritime Organisation by means of Assembly Resolution A.849(20) of 27 November 1997: see the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 11(2). As to the International Maritime Organisation see PARA 13.
- 10 For these purposes, 'EEA state' means a member state of the European Communities, Norway, Iceland or Liechtenstein: Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 11(2).
- 11 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 11(1).
- 12 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(3).
- 13 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(4). As to the Secretary of State see PARA 38.
- 14 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(5).
- 15 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(5)(a).
- 16 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(5)(b).
- 17 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(5).
- 18 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(5)(i). The reference in head (1) in the text to the sole objective is to the objective set out in reg 5 (see PARA 848): see reg 10(5)(i).
- 19 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(5)(ii).
- 20 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(6).
- 21 le any document, record or information mentioned in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9 (see PARA 851): see reg 10(7).

- 22 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(7).
- 23 As to the meaning of 'preliminary examination' see PARA 850 note 5.
- 24 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(8)(a).
The reference in head (a) in the text to the sole objective is to the objective set out in reg 5 (see PARA 848): see reg 10(8)(a).
- 25 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(8)(b).

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853. Reports of investigations of marine accidents and other publications.

The Chief Inspector¹ must cause any report of an investigation of an accident² (other than an accident the investigation of which is being undertaken on behalf of a state other than the United Kingdom³) to be submitted to the Secretary of State⁴ and made publicly available in the shortest time possible and in such manner as he thinks fit⁵. Such a report must set out:

- 1081 (1) conclusions relating to the facts of the accident⁶;
- 1082 (2) where the facts cannot be clearly established, analysis and professional judgement to determine the probable facts⁷; and
- 1083 (3) recommendations for future safety⁸.

However, the Chief Inspector must not make the report publicly available until he has:

- 1084 (a) served a notice on any person who, or organisation which, could be adversely affected by the report or, if that person is deceased, upon such person or persons as appear to the Chief Inspector, at the time he proposes to serve notice, as best to represent the interests and reputation of the deceased in the matter⁹; and
- 1085 (b) considered the representations relating to the facts or analysis contained in the report which may be made to him¹⁰ by or on behalf of the persons served with such notice, and amended the report in such manner as he thinks fit¹¹.

The notice referred to in head (a) above must be accompanied by a draft copy of the report¹²; and any representation made under head (b) above, must be in writing and must be served on the Chief Inspector within 28 days of service of the notice referred to in head (a) above, or within such further period as may be allowed¹³.

Subject to any court order¹⁴, no person may disclose any information which has been furnished to him through receipt of a draft copy of the report¹⁵, or which has otherwise been furnished to him by or on behalf of the Chief Inspector in advance of the publication of a report and whose confidentiality is protected¹⁶, or permit such information to be disclosed, save with the prior consent in writing of the Chief Inspector, to any other person, except to such advisers as are necessary in order to make the representations to the Chief Inspector referred to in head (b) above, and those advisers must similarly be subject to the duty not to disclose the information or permit it to be disclosed¹⁷.

A copy of the report when made publicly available must be given by the Chief Inspector to:

- 1086 (i) any person who has been served with a notice given under head (a) above¹⁸;
- 1087 (ii) those persons or bodies to whom recommendations have been addressed in that report¹⁹;
- 1088 (iii) the Secretary of State²⁰;
- 1089 (iv) the International Maritime Organisation²¹;
- 1090 (v) where an investigation involves a ro-ro ferry or high speed passenger craft which has been subject to a mandatory survey for its safe operation²², to the European Commission²³; and

- 1091 (vi) any person or organisation whom the Chief Inspector considers may find the report useful or of interest²⁴.

Where an inquest or fatal accident inquiry is to be held following an accident which has been subject to investigation, a draft report may be made available in confidence to the coroner by the Chief Inspector²⁵. If any part of the report or analysis is based on information obtained pursuant to an inspector's conferred powers²⁶, the report is inadmissible in any judicial proceedings²⁷ whose purpose or one of whose purposes is to attribute or apportion liability or blame unless a court or tribunal, having regard to any future accident investigation undertaken in the United Kingdom²⁸, or relations between the United Kingdom and any other state or international organisation²⁹, determines otherwise³⁰.

The Chief Inspector may, at his discretion and to promulgate any lessons learned, from time to time publish collective short reports of accidents which have not been the subject of such a report³¹. The Chief Inspector may, at his discretion, submit a report to the Secretary of State on any matter arising from his analysis of marine accident investigations³².

1 As to the meaning of 'Chief Inspector' see PARA 847 note 4.

2 Is an investigation into an accident leading to publication of a report, conducted pursuant to the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 10(8)(a) (see PARA 852): see reg 13(1). As to the meaning of 'accident' see PARA 846. As to the application of the regulations generally see PARA 847; and as to penalties for contravention see PARA 1198.

3 As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 As to the Secretary of State see PARA 38.

5 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(1). This provision is subject to reg 13(3) (see the text and notes 9-11): see reg 13(1).

6 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(2)(a).

7 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(2)(b).

8 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(2)(c).

9 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(3)(a). Any notice or other document required or authorised by any provision of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, to be served on or given to any person may be served or given:

992 (1) by delivering it to that person (reg 17(a));

993 (2) by leaving it at his usual or last-known residence or place of business, whether in the United Kingdom or elsewhere (reg 17(b));

994 (3) by sending it to him by post at that address (reg 17(c)); or

995 (4) by sending it to him at the address by telex, facsimile, or other means which produces a document containing a text of the communication, or by electronic mail in which event the document is regarded as having been served when it is sent (reg 17(d)).

10 Is in accordance with the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(5) (see the text and note 13): see reg 13(3)(b).

11 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(3)(b).

12 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(4).

13 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(5). The Chief Inspector has the power to extend the period of 28 days prescribed in reg 13(5), but he must do so only if

he considers that there are good reasons warranting such an extension having regard to the requirement in reg 13(1) (see the text and notes 1-5) for a report of an investigation to be made available in the shortest time possible: reg 16(1). This power may be exercised notwithstanding that the prescribed period has expired: reg 16(3).

14 le any court order under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12 (see PARA 854): see reg 13(6).

15 le pursuant to the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(4) (see the text and note 12): see reg 13(6).

16 le by the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12 (see PARA 854): see reg 13(6).

17 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(6).

18 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(7)(a).

19 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(7)(b).

20 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(7)(c).

21 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(7)(d). As to the International Maritime Organisation see PARA 13.

22 le where the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 11(1) applies to the investigation (see PARA 852): see reg 13(7)(e).

23 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(7)(e).

24 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(7)(f).

25 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(8).

26 le an inspector's powers under the Merchant Shipping Act 1995 s 259 (see PARA 49) and s 267(8) (see PARA 844): see the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(9). As to the meaning of 'inspector' see PARA 847 note 4.

27 For these purposes, 'judicial proceedings' includes any civil or criminal proceedings before any court, tribunal or person having by law the power to hear, receive and examine evidence on oath: Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(10). 'Court' in the case of judicial proceedings or an application for disclosure made in England or Wales means the High Court: reg 2(1). As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

28 le having regard to the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(5)(b) (see PARA 854): see reg 13(9).

29 le having regard to the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(5)(c) (see PARA 854): see reg 13(9).

30 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(9).

31 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 14(1). The text refers to accidents which have not been the subject of a report published under reg 13(1) (see the text and notes 1-5): see reg 14(1).

32 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 14(2).

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854. Disclosure of records relating to the investigation of marine accidents.

In general¹, the names, addresses or any other details of anyone who has given evidence to an inspector² must not be disclosed³; and, unless a court⁴ orders otherwise, the following documents or records must not be made available for purposes other than the investigation⁵:

- 1092 (1) all declarations or statements taken from persons by an inspector or supplied to him in the course of his investigation, together with any notes or voice recordings of interviews⁶;
- 1093 (2) medical or confidential information regarding persons involved in an accident⁷;
- 1094 (3) any report⁸ concerning the circumstances of an accident or serious injury⁹;
- 1095 (4) copies of the report other than the final report¹⁰.

Nevertheless, no order for disclosure of the documents or records listed in heads (1) to (4) above may be made by the court unless it is satisfied, having regard to the views of the Chief Inspector¹¹, that the interests of justice in disclosure outweigh any prejudice, or likely prejudice, to¹²:

- 1096 (a) the investigation into the accident to which the document or record relates¹³;
- 1097 (b) any future accident investigation undertaken in the United Kingdom¹⁴; or
- 1098 (c) relations between the United Kingdom and any other state, or international organisation¹⁵.

However, a person who has given a declaration or statement to an inspector in the course of an investigation may make available a copy of his declaration or statement to another person as he sees fit¹⁶; and any independent technical analysis commissioned by the Chief Inspector, and opinions expressed in such analysis, may be made publicly available if he considers it appropriate to do so¹⁷.

Copies of information obtained from a voyage data recorder¹⁸ or from other recording systems, pertinent to the accident, including voice recordings (other than any recordings mentioned in head (1) above), video recordings and other electronic or magnetic recordings and any transcripts made from such information or recordings, may be provided at the discretion of the Chief Inspector to the police or other official authorities¹⁹.

The general provisions relating to the disclosure of records²⁰ are without prejudice to any rule of law which authorises or requires the withholding of any document or record or part thereof on the ground that disclosure of it would be injurious to the public interest²¹.

1 le subject to the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(2)-(7) (see the text and notes 4-21); see reg 12(1). As to the application of the regulations generally see PARA 847; and as to penalties for contravention see PARA 1198.

2 As to the meaning of 'inspector' see PARA 847 note 4.

3 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(1).

- 4 As to the meaning of 'court' for these purposes see PARA 853 note 27.
- 5 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(2).
- 6 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(2)(a). Head (1) in the text is subject to reg 12(3) (see the text and note 16): see reg 12(2)(a).
- 7 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(2)(b). As to the meaning of 'accident' see PARA 846.
- 8 In any report made under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(4), (5) (see PARA 849): see reg 12(2)(c).
- 9 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(2)(c). As to the meaning of 'serious injury' see PARA 846.
- 10 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(2)(d). Head (4) in the text does not apply to draft copies of the report made available as mentioned in reg 13(3)(a), (4) or (8) (see PARA 853): see reg 12(2)(d).
- 11 As to the meaning of 'Chief Inspector' see PARA 847 note 4.
- 12 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(5). This provision is subject to reg 12(6) (see the text and notes 20-21): see reg 12(5).
- 13 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(5)(a).
- 14 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(5)(b). As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 15 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(5)(c).
- 16 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(3).
- 17 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(4).
- 18 As to the meaning of 'voyage data recorder' see PARA 849 note 27.
- 19 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(7).
- 20 In the provisions of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12 (see the text and notes 1-19): see reg 12(6).
- 21 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(6).

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855. Recommendations as to how future marine accidents may be prevented.

The Chief Inspector¹ may as a result of one or more investigations, whether or not completed, at any time make recommendations as to how future accidents² may be prevented³. The actions recommended must be addressed to those persons or bodies who, in the opinion of the Chief Inspector, are most fitted to implement them⁴; and recommendations must be made publicly available if the Chief Inspector considers that to do so is in the interests of safety or preventing pollution⁵.

Any person to whom a recommendation is addressed must without delay⁶:

- 1099 (1) take that recommendation into consideration⁷;
- 1100 (2) send to the Chief Inspector:
55
 - 122. (a) details of the measures, if any, he has taken or proposes to take to implement the recommendation and, in a case where he proposes to implement measures, the timetable for securing that implementation⁸; or
 - 123. (b) an explanation as to why the recommendation is not to be the subject of measures to be taken to implement it⁹,
- 56
 - 1101 and any details or timetable pursuant to head (2)(a) above or explanation pursuant to head (2)(b) above must be provided to the Chief Inspector within 28 days following receipt of the recommendation¹⁰; and
 - 1102 (3) give notice to the Chief Inspector if at any time any information provided to the Chief Inspector in pursuance of head (2)(a) above concerning the measures he proposes to take or the timetable for securing their implementation is rendered inaccurate by any change of circumstances¹¹.

The Chief Inspector must, annually or at such other intervals as he sees fit, make information publicly available in respect of the matters, including any explanation mentioned in heads (2) and (3) above, which have been communicated to him, and he must inform the Secretary of State of those matters¹². However, the Chief Inspector must not publish such information unless he has first notified any person mentioned in the information and considered any representations relating to the information which may be made to him by or on behalf of any person so notified, and amended the information in such manner as he thinks fit¹³. Any such representations must be in writing and must be served on the Chief Inspector within 28 days of receipt of the notification or within such further period as may be allowed¹⁴.

1 As to the meaning of 'Chief Inspector' see PARA 847 note 4.

2 As to the meaning of 'accident' see PARA 846.

3 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 15(1). As to the application of the regulations see PARA 847.

4 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 15(2).

5 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 15(3).

- 6 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 15(4).
- 7 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 15(4)(a).
- 8 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 15(4)(b)(i).
- 9 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 15(4)(b)(ii).
- 10 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 15(4)(b). The Chief Inspector has the power to extend the period of 28 days prescribed in reg 15(4)(b), where he considers it appropriate to do so: reg 16(2). This power may be exercised notwithstanding that the prescribed period has expired: reg 16(3).
- 11 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 15(4)(c).
- 12 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 15(5). As to the Secretary of State see *PARA 38*.
- 13 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 15(6).
- 14 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 15(7). The text refers to such further period as may be allowed under reg 16: see reg 15(7). However, at the date which this volume states the law, reg 16 makes no such provision in relation to reg 15(7); cf note 10; and *PARA 853* note 13.

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(2) FORMAL INVESTIGATIONS BY WRECK COMMISSIONER

(i) In general

856. Provision for formal investigation into accident to be held by a wreck commissioner.

Where any accident¹ has occurred, the Secretary of State² may, whether or not an investigation into it has been carried out by marine inspectors³, cause a formal investigation into the accident to be held by a wreck commissioner⁴.

A wreck commissioner holding a formal investigation must conduct it in accordance with the rules⁵; and those rules must require the assistance of one or more assessors⁶ and, if any question as to the cancellation or suspension of an officer's certificate is likely, the assistance of not less than two assessors⁷.

If, as a result of the investigation, the wreck commissioner is satisfied, with respect to any officer, of any of the following matters⁸, that is say:

- 1103 (1) that the officer is unfit to discharge his duties, whether by reason of incompetence or misconduct or for any other reason⁹;
- 1104 (2) that the officer has been seriously negligent in the discharge of his duties¹⁰;
or
- 1105 (3) that the officer has failed to comply with his duty¹¹ to assist in case of collision¹²,

and, if it is a matter mentioned in heads (1) or (2) above, is further satisfied that it caused or contributed to the accident, he may cancel or suspend any certificate issued to the officer¹³ or censure him; and, if he cancels or suspends the certificate, the officer must deliver it forthwith to him or to the Secretary of State¹⁴. If a person fails to deliver a cancelled or suspended certificate as so required, he is guilty of an offence¹⁵.

Where a certificate has been so cancelled or suspended, the Secretary of State, if of the opinion that the justice of the case requires it, may reissue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate¹⁶.

The wreck commissioner may make such awards as he thinks just with regard to the costs of the investigation and of any parties at the investigation, and with regard to the parties by whom those costs are to be paid; and any such award of the wreck commissioner may, on the application of any party named in it, be made an order of the High Court¹⁷. Any costs directed by an award to be paid are to be assessed in the High Court¹⁸.

The wreck commissioner must make a report on the investigation to the Secretary of State¹⁹.

1 For these purposes, 'accident' means any accident to which regulations under the Merchant Shipping Act 1995 s 267 (see PARA 845) apply or any incident or situation to which any such regulations apply by virtue of s 267(5) (see PARA 845): see s 268(1).

2 As to the Secretary of State see PARA 38.

3 le under the Merchant Shipping Act 1995 s 267 (see PARA 844): see s 268(1). As to the appointment of marine accident inspectors see PARA 844.

4 Merchant Shipping Act 1995 s 268(1). As to the appointment of wreck commissioners see PARA 58. The Magistrates' Courts Act 1980 s 97(1), (3), (4) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 734), which provides for the attendance of witnesses and the production of evidence, applies in relation to a formal investigation held by a wreck commissioner as if the wreck commissioner were a magistrates' court and the investigation a complaint; and the wreck commissioner has power to administer oaths for the purposes of the investigation: Merchant Shipping Act 1995 s 268(3).

The Merchant Shipping Act 1995 ss 268-270 apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

5 le in accordance with rules under the Merchant Shipping Act 1995 s 270(1) (see PARA 857): see s 268(2).

6 As to the role of assessors generally see PARA 205.

7 Merchant Shipping Act 1995 s 268(2).

8 le any of the matters mentioned in the Merchant Shipping Act 1995 s 61(1)(a)-(c) (see heads (1) to (3) in the text): see s 268(5).

9 See the Merchant Shipping Act 1995 s 61(1)(a); and PARA 511.

10 See the Merchant Shipping Act 1995 s 61(1)(b); and PARA 511.

11 le under the Merchant Shipping Act 1995 s 92 (see PARA 756): see s 61(1)(c); and PARA 511.

12 See the Merchant Shipping Act 1995 s 61(1)(c); and PARA 511.

13 le under the Merchant Shipping Act 1995 s 47 (see PARA 490): see s 268(5).

14 Merchant Shipping Act 1995 s 268(5).

15 See the Merchant Shipping Act 1995 s 268(6); and PARA 1142.

16 Merchant Shipping Act 1995 s 268(7).

17 Merchant Shipping Act 1995 s 268(8).

18 Merchant Shipping Act 1995 s 268(9)(a).

19 Merchant Shipping Act 1995 s 268(10).

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(ii) Procedure for Formal Investigation

857. Power to make rules for the conduct of formal investigations.

The Secretary of State¹ may make rules for the conduct of formal investigations² and for the conduct of any rehearing³ which is not held by the High Court⁴.

Such rules may provide⁵ for the appointment and summoning of assessors⁶, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected⁷.

Rules of court made for the purpose of rehearings⁸ which are held by the High Court, or of appeals to the High Court, may require the court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a rehearing or hear such an appeal with the assistance of one or more assessors⁹.

1 As to the Secretary of State see PARA 38.

2 Ie under the Merchant Shipping Act 1995 s 268 (see PARA 856): see s 270(1).

3 Ie under the Merchant Shipping Act 1995 s 269 (see PARA 871): see s 270(1).

4 Merchant Shipping Act 1995 s 270(1). At the date at which this volume states the law, no such rules had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001 (see PARA 858 et seq) have effect as if so made. The Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply to any formal investigation and to any rehearing of such a formal investigation under the Merchant Shipping Act 1995 s 269 (see PARA 871) which is not held by the High Court: Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 3; Interpretation Act 1978 s 17(2)(b).

As to the power of the Secretary of State to make rules under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any rules etc, see PARA 41.

The Merchant Shipping Act 1995 ss 268-270, and the Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

5 Ie without prejudice to the generality of the Merchant Shipping Act 1995 s 270(1) (see the text and notes 1-4): see s 270(2).

6 As to the role of assessors generally see PARA 205.

7 Merchant Shipping Act 1995 s 270(2).

8 Ie under the Merchant Shipping Act 1995 s 269 (see PARA 871): see s 270(3).

9 Merchant Shipping Act 1995 s 270(3).

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858. Wreck commissioners and assessors.

Where it appears to the Secretary of State¹ that a formal investigation² should be held into the circumstances or causes of, or into any particular matter relating to, an accident, he may direct that a formal investigation be held and conducted in accordance with the rules which govern such investigations³ by a wreck commissioner⁴. The wreck commissioner must be assisted by one or more assessors appointed by the Lord Chancellor⁵.

The Lord Chancellor must maintain a list of assessors who have the required qualifications⁶ and may at any time add or withdraw the name of any person to or from the list⁷.

If any question as to the cancellation or suspension of an officer's⁸ certificate is likely to arise, the wreck commissioner must be assisted by not less than two assessors⁹:

- 1106 (1) two of whom must be, in the case of a master or deck officer, mercantile marine masters¹⁰;
- 1107 (2) one of whom must be, in the case of a marine engineer officer, a mercantile marine engineer, and one a mercantile marine master¹¹;
- 1108 (3) one of whom must be, in the case of a fishing vessel officer, a mercantile marine master and one a fishing vessel skipper¹²;

and in any such case where a question as to the cancellation or suspension of an officer's certificate is likely to arise, wherever possible at least one of the assessors appointed must have had experience in the same capacity and in the same type of ship as the officer concerned¹³.

1 As to the Secretary of State see PARA 38.

2 For these purposes, 'formal investigation' means a formal investigation into an accident under the Merchant Shipping Act 1995 s 268 (see PARA 856): Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 2(1) (definition amended by SI 1990/123); Interpretation Act 1978 s 17(2)(b). 'Accident' means any accident to which the Merchant Shipping Act 1995 s 268 applies: Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 2(1) (definition substituted by SI 1990/123); Interpretation Act 1978 s 17(2)(b).

3 In accordance with the Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001 (see PARAS 857, 859 et seq): see the Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 4(1) (amended by SI 1990/123).

The Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

4 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 4(1) (as amended: see note 3). For these purposes, 'wreck commissioner' means, in the case of a formal investigation to be held in England and Wales, a wreck commissioner appointed for that purpose by the Lord Chancellor: r 2(1). As to the meanings of 'England' and 'Wales' see PARA 17 note 2. As to the appointment of wreck commissioners see PARA 58. As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq.

5 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 4(1) (as amended: see note 3). As to the role of assessors generally see PARA 205.

6 The qualifications so required are:

- 996 (1) in the case of a mercantile marine master, he must: (a) be in possession of a Certificate of Competency (Deck Officer) (Class 1) (Master Mariner) (or its equivalent) and have had command of a United Kingdom registered vessel for at least two years; (b) have a wide knowledge of all modern aids to navigation; (c) not be more than 70 years of age;
- 997 (2) in the case of a mercantile marine engineer, he must: (a) be in possession of a Certificate of Competency (Marine Engineer Officer) (Class 1) (or its equivalent) and have been the Chief Engineer Officer of a United Kingdom registered ship for at least two years; (b) have a wide knowledge of matters relating to marine engineering; (c) not be more than 70 years of age;
- 998 (3) in the case of a fishing vessel skipper, he must: (a) be in possession of a Skipper's (Full) Certificate and have had command of a fishing vessel for at least two years; (b) have a wide knowledge of fishing vessels and their operation; (c) not be more than 70 years of age;
- 999 (4) in the case of the Royal Navy, he must: (a) have had rank of Admiral or Captain and two years' service in command of one or Her Majesty's ships at sea; or (b) have had rank of Commander and two years' service in that rank in one of Her Majesty's ships at sea; or (c) have had rank of Lieutenant-Commander and two years' service in that rank as an appropriate specialist in one of Her Majesty's ships at sea; and (d) not be more than 70 years of age;
- 1000 (5) in the case of a person of special skill or knowledge, he must be: (a) a naval architect; or (b) a person with special skills or knowledge, including managerial experience:

Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 4(2), Schedule.

7 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 4(2).

8 For these purposes, 'officer' means an officer qualified for the purposes of the Merchant Shipping Act 1995 s 47 (see PARA 490) and includes a master, skipper, mate, second hand, deck officer, marine engineer officer and radio officer: Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 2(1); Interpretation Act 1978 s 17(2)(b).

9 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 4(3).

10 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 4(3)(a).

11 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 4(3)(b).

12 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 4(3)(c).

13 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 4(4).

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859. Remittance of case to the Attorney General.

Where the Secretary of State¹ has directed a formal investigation² to be held, he must remit the case to the Attorney General³, and thereafter the preparation and presentation of the case must be conducted by the Treasury Solicitor under the direction of the Attorney General⁴; the Chief Inspector of Marine Accidents must render such assistance to the wreck commissioner⁵ and to the Attorney General as is in his power⁶.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'formal investigation' see PARA 858 note 2.

3 As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

4 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 4A (added by SI 1990/123).

The Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

5 As to the meaning of 'wreck commissioner' see PARA 858 note 4.

6 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 4A (as added: see note 4).

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860. Notice of investigation; parties to the investigation.

When the Secretary of State¹ causes a formal investigation² to be held, the Attorney General³ must cause a notice (a 'notice of investigation') to be served on any persons, including the Department of Transport⁴, who in the opinion of the Attorney General ought to be made a party⁵; and any such person upon whom a notice of investigation has been served is a party to the formal investigation⁶. The Attorney General must be a party to the formal investigation⁷.

The notice of investigation must contain a statement of the facts giving rise to the formal investigation and a statement of the questions which the Attorney General intends to raise at the formal investigation⁸. At any time before or during the hearing of the formal investigation the Attorney General may amend, add to or omit any of the questions contained in the notice of investigation⁹.

The Attorney General must, as far as practicable, cause every party to the formal investigation to be given not less than 30 days' notice of the time of and the date when and the place where the hearing of the formal investigation will commence, provided that such notice is not required to be given to any person who is made a party¹⁰ after the date of the hearing has been fixed¹¹.

If at any time during the preparation for the formal investigation it appears likely to the Attorney General that the conduct of any person will be in issue, the Attorney General must cause that person to be notified to that effect¹².

Service of any notice or other document so issued¹³ may be effected either personally or by registered post or by the recorded delivery service to the person's last known address¹⁴.

Any person who is not already a party to a formal investigation may, with the leave of the wreck commissioner¹⁵, become a party to the formal investigation¹⁶. Application for such leave may be made to the wreck commissioner at any time before or during the formal investigation¹⁷.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'formal investigation' see PARA 858 note 2.

3 As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

4 As to the Department of Transport see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 509-511.

5 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 5(1) (amended by SI 1990/123).

The Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

6 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 5(1) (as amended: see note 5).

7 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 5(1) (as amended: see note 5).

8 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 5(2) (amended by SI 1990/123).

9 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 5(2) (as amended: see note 8).

10 le pursuant to the Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 6 (see the text and notes 15-17): see r 5(3) (amended by SI 1990/123).

11 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 5(3) (as amended: see note 10). Any period of time specified in the Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, by reference to days is exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday, Christmas Day, Good Friday or any day appointed by law to be a bank holiday in that part of the United Kingdom where the formal investigation is to be held, in which case the time is to be reckoned exclusively of that day also: r 2(2).

12 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 5(4) (amended by SI 1990/123).

13 le under the Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 5: see r 5(5).

14 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 5(5).

15 As to the meaning of 'wreck commissioner' see PARA 858 note 4.

16 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 6.

17 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 6.

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861. Admission of evidence to formal investigation.

Without prejudice to the admission of documents as secondary evidence allowed by statute or otherwise, statements, statutory declarations, any report of an investigation into the accident¹, the subject of a formal investigation², conducted by an inspector³ and other written evidence must, unless the wreck commissioner⁴ considers it unjust, be admitted as evidence at the formal investigation⁵.

A party may give to any other party notice in writing to admit any documents, saving all just exceptions, and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing is liable for all the costs of proving the documents, whatever may be the result, unless the wreck commissioner is of opinion that the refusal to admit was reasonable⁶; and no costs of proving any document may be allowed unless such notice has been given, except where the omission to give the notice has, in the opinion of an officer by whom the costs are assessed, caused a saving of expense⁷.

1 As to the meaning of 'accident' see PARA 858 note 2.

2 As to the meaning of 'formal investigation' see PARA 858 note 2.

3 I.e. pursuant to the Merchant Shipping Act 1995 s 267 (see PARA 844): see the Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 7(1) (amended by SI 1990/123); Interpretation Act 1978 s 17(2)(b).

4 As to the meaning of 'wreck commissioner' see PARA 858 note 4.

5 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 7(1) (as amended: see note 3); Interpretation Act 1978 s 17(2)(b).

The Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

6 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 7(2).

7 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 7(2).

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862. Meeting preliminary to commencement of formal investigation.

At any time before the date appointed for the commencement of the formal investigation¹ the wreck commissioner² may hold a preliminary meeting at which any direction may be given or any preliminary or interim order as to the procedure may be made³.

1 As to the meaning of 'formal investigation' see PARA 858 note 2.

2 As to the meaning of 'wreck commissioner' see PARA 858 note 4.

3 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 7(3).

The Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

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863. Holding of formal investigation.

At the time and place appointed for the commencement of the formal investigation¹, the wreck commissioner² may proceed with the formal investigation whether the parties upon whom a notice of investigation³ has been served, or a person who has applied to become a party⁴, or any of them, are present or not, provided that, where the party concerned has been served with the notice of investigation by, the wreck commissioner must not proceed with the formal investigation in his absence unless satisfied that the party has been duly served⁵.

The wreck commissioner must hold the formal investigation in public save to the extent to which he is of opinion that, in the interest of justice or for other good and sufficient reason in the public interest, any part of the evidence, or any argument relating thereto, should be heard in private⁶.

1 As to the meaning of 'formal investigation' see PARA 858 note 2.

2 As to the meaning of 'wreck commissioner' see PARA 858 note 4.

3 As to the meaning of 'notice of investigation' see PARA 860.

4 Ie pursuant to the Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 6: see PARA 860.

The Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

5 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 7(4). The text refers to the party being duly served in accordance with the requirements of r 5(5) (see PARA 860): see r 7(4).

6 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 7(5).

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864. Opening statements in formal investigation; written statements.

The formal investigation¹ must commence with an opening statement by the Attorney General², followed at the discretion of the wreck commissioner³ with brief speeches on behalf of the other parties⁴. The proceedings must continue with the production and examination of witnesses on behalf of the Attorney General; and the Attorney General may adduce documentary evidence⁵. These witnesses may be cross-examined by the parties in such order as the wreck commissioner may direct and then be re-examined on behalf of the Attorney General⁶. The Attorney General must then cause to be stated the questions relating to the accident⁷ and to the conduct of persons connected with the accident upon which the opinion of the wreck commissioner is desired⁸. In framing the questions for the opinion of the wreck commissioner, the Attorney General may make such modifications in, additions to, or omissions from, the questions as set out in the notice of investigation⁹ or subsequent notices¹⁰ as, having regard to the evidence which has been given, the Attorney General may think fit¹¹.

Any other party to the formal investigation is entitled to make a further opening statement, to give evidence, to adduce documentary evidence, to call witnesses, to cross-examine any witnesses called by any other party and to address the wreck commissioner in such order as the wreck commissioner may direct¹². The Attorney General may also produce and examine further witnesses who may be cross-examined by the parties and re-examined by the Attorney General¹³.

A party who does not appear in person at a formal investigation and is not represented may make representations in writing to the wreck commissioner and such written representations may be read out at the formal investigation by or on behalf of the wreck commissioner¹⁴.

1 As to the meaning of 'formal investigation' see PARA 858 note 2.

2 As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

3 As to the meaning of 'wreck commissioner' see PARA 858 note 4.

4 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 7(6) (amended by SI 1990/123).

The Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

5 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 7(6) (as amended: see note 4).

6 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 7(6) (as amended: see note 4).

7 As to the meaning of 'accident' see PARA 858 note 2.

8 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 7(6) (as amended: see note 4).

9 As to the meaning of 'notice of investigation' see PARA 860.

10 Ie referred to in the Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 5(2) (see PARA 860): see r 7(6) (as amended: see note 4).

11 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 7(6) (as amended: see note 4).

- 12 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 8(1) (amended by SI 1990/123).
- 13 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 8(1) (as amended: see note 12).
- 14 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 8(2).

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865. Conduct of formal investigation.

Every formal investigation¹ must be conducted in such manner that, if substantial criticism² is made against any person, that person has an opportunity of making his defence either in person or otherwise³.

1 As to the meaning of 'formal investigation' see PARA 858 note 2.

2 For these purposes, 'substantial criticism' means criticism which in the opinion of the wreck commissioner is substantial criticism: Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 2(1).

3 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 9.

The Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

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866. Addresses to the wreck commissioner after taking of evidence.

Any of the parties who desires so to do may, after completion of the taking of evidence, address the wreck commissioner¹ upon the evidence; and the Attorney General² may address the wreck commissioner in reply upon the whole case³. After this address in reply upon the whole case, at the discretion of the wreck commissioner, an officer⁴ of whose conduct substantial criticism⁵ has been made during the formal investigation⁶ may be permitted or invited to make a final statement as to why, in the event of a finding that his conduct caused or contributed to the accident, his certificate of competency should not be cancelled or suspended, or as to why he should not be censured⁷.

1 As to the meaning of 'wreck commissioner' see PARA 858 note 4.

2 As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

3 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 10 (amended by SI 1990/123).

The Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

4 As to the meaning of 'officer' see PARA 858 note 8.

5 As to the meaning of 'substantial criticism' see PARA 865 note 2.

6 As to the meaning of 'formal investigation' see PARA 858 note 2.

7 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 10 (as amended: see note 3). As to officer's certificates in general see PARA 495 et seq.

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867. Adjournment of formal investigation.

The wreck commissioner¹ may adjourn the formal investigation² from time to time and from place to place; and, where an adjournment is asked for by any party to the formal investigation, the wreck commissioner may impose such terms as to payment of costs as he thinks just as a condition of granting the adjournment³.

1 As to the meaning of 'wreck commissioner' see PARA 858 note 4.

2 As to the meaning of 'formal investigation' see PARA 858 note 2.

3 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 11.

The Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

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868. Result of formal investigation.

At the end of the formal investigation¹ the wreck commissioner² must:

- 1109 (1) in any case where an officer's³ certificate is in issue, give his decision concerning the certificate in public⁴;
- 1110 (2) whether or not a certificate is in issue, make a report on the case to the Secretary of State⁵ including his and the assessor's, or assessors', findings as to the reasons for the accident⁶ or as to any particular matter relating thereto, or as to the conduct or any person implicated therein, and the reason for suspending or cancelling any officer's certificate⁷.

1 As to the meaning of 'formal investigation' see PARA 858 note 2.

2 As to the meaning of 'wreck commissioner' see PARA 858 note 4.

3 As to the meaning of 'officer' see PARA 858 note 8.

4 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 12(a) (substituted by SI 1990/123). As to officer's certificates in general see PARA 490 et seq.

The Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

5 As to the Secretary of State see PARA 38.

6 As to the meaning of 'accident' see PARA 858 note 2.

7 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 12(b).

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869. Reports of formal investigation.

Each assessor¹ must either sign the report with or without reservations, or state in writing his dissent therefrom and his reasons for such dissent; and such dissent and reasons, if any, must be forwarded to the Secretary of State² with the report³. The Secretary of State must, unless in the interests of justice or otherwise in the public interest there are good reasons to the contrary, cause each party to the formal investigation⁴ to be given a copy of the whole or, where appropriate, the relevant part of the report⁵.

Further copies of the report must not be released until the Secretary of State is satisfied that the parties have had reasonable time to receive and read their copies⁶.

1 As to the appointment of assessors for these purposes see PARA 858.

2 As to the Secretary of State see PARA 38.

3 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 13 (amended by SI 1990/123). As to the report that must be forwarded to the Secretary of State see PARA 868.

The Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

4 As to the meaning of 'formal investigation' see PARA 858 note 2.

5 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 13 (as amended: see note 3).

6 Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 13 (as amended: see note 3).

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870. Costs.

Where the wreck commissioner¹ makes any award as to the costs of the investigation and of any of the parties at the investigation, or with regard to the parties by whom those costs are to be paid, he must state in a report his reasons for making such an award².

¹ As to the meaning of 'wreck commissioner' see PARA 858 note 4.

² Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 14 (substituted by SI 1990/123). As to the wreck commissioner's report see PARA 868.

The Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

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(iii) Rehearings and Appeals

871. Rehearing of and appeal from investigations.

Where a formal investigation has been held¹, the Secretary of State² may order the whole or part of the case to be reheard³; and he must do so:

- 1111 (1) if new and important evidence which could not be produced at the investigation has been discovered⁴; or
- 1112 (2) if there appear to the Secretary of State to be other grounds for suspecting that a miscarriage of justice may have occurred⁵.

Such an order may provide for the rehearing to be by a wreck commissioner⁶ or by the High Court⁷; and any such rehearing which is not held by the High Court must be conducted in accordance with rules made⁸ by the Secretary of State in relation to marine investigations and appeals⁹.

Where the wreck commissioner holding the investigation has decided to cancel or suspend the certificate of any person or has found any person at fault, then, if no application for an order to rehear the formal investigation¹⁰ has been made, or if such an application has been refused, that person or any other person who, having an interest in the investigation, has appeared at the hearing and is affected by the decision or finding, may appeal to the High Court¹¹. Also, where a certificate has been so cancelled or suspended, the Secretary of State, if of the opinion that the justice of the case requires it, may reissue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate¹².

The discretion to be exercised in relation to the incidence of the costs of participation of a party to a formal investigation or rehearing of the formal investigation must have regard to the application of relevant public policy factors¹³.

1 le under the Merchant Shipping Act 1995 s 268 (see PARA 856): see s 269(1).

2 As to the Secretary of State see PARA 38.

3 See the Merchant Shipping Act 1995 s 269(1). In the case of *Re M/V Derbyshire*(1999) Times, 28 October, the effect of an order issued under the Merchant Shipping Act 1995 s 269 for a rehearing of the formal investigation ('RFI') in respect of 'the whole case' was held to have the effect of initiating a complete re-investigation into the 'accident' involving the loss of the vessel, treating 'accident' as having the same meaning as it would for the purpose of s 268 (as to which see PARA 856 note 1).

The Merchant Shipping Act 1995 ss 268-270 apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

4 Merchant Shipping Act 1995 s 269(1)(a).

5 Merchant Shipping Act 1995 s 269(1)(b).

6 As to the appointment of wreck commissioners see PARA 58.

7 Merchant Shipping Act 1995 s 269(2)(a). This provision applies only if the investigation was held in England or Wales: see s 269(2)(a). As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

8 *Ie* under the Merchant Shipping Act 1995 s 270(1) (see PARA 857): see s 269(3).

9 Merchant Shipping Act 1995 s 269(3). The provisions of s 268 (see PARA 856) apply in relation to a rehearing of an investigation by a wreck commissioner as they apply in relation to the holding of an investigation: s 269(3).

10 *Ie* under the Merchant Shipping Act 1995 s 269(1) (see the text and notes 1-5): see s 269(4).

11 Merchant Shipping Act 1995 s 269(4). This provision applies only if the investigation was held in England or Wales: see s 269(4).

12 Merchant Shipping Act 1995 s 268(7), applied by s 269(5).

13 *Re-hearing of the formal Investigation into the loss of the MV Derbyshire*[2003] 1 All ER (Comm) 784.

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872. Procedure.

Any rehearing of a formal investigation¹ which is not held by the High Court must be conducted in accordance with the provisions of rules governing formal investigations².

¹ ie pursuant to the Merchant Shipping Act 1995 s 269(1) (see PARA 871): see the Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 15; Interpretation Act 1978 s 17(2)(b). For these purposes, 'rehearing' means a rehearing of a formal investigation: Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 2(1). As to the meaning of 'formal investigation' see PARA 858 note 2.

The Merchant Shipping Act 1995 ss 268-270, and the Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, apply in relation to hovercraft as they apply in relation to ships, and for that purpose have effect subject to the modifications set out in the Hovercraft (Application of Enactments) Order 1989, SI 1989/1350, art 2, Sch 1: see art 2. See also PARA 382.

² Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001, r 15; Interpretation Act 1978 s 17(2)(b). The text refers to a rehearing to be conducted in accordance with the provisions of the Merchant Shipping (Formal Investigations) Rules 1995, SI 1995/1001 (see PARA 858 et seq): see r 15.

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(3) INQUIRIES INTO AND REPORTS ON DEATHS AND INJURIES

873. Inquiries into deaths of crew members and others.

Where:

- 1113 (1) any person dies in a United Kingdom ship¹ or in a boat or life-raft from such a ship²; or
- 1114 (2) the master³ of, or a seaman⁴ employed in, such a ship dies in a country outside the United Kingdom⁵,

an inquiry into the cause of the death must be held by a superintendent⁶ or proper officer⁷ at the next port⁸ where the ship calls after the death and where there is a superintendent or proper officer, or at such other place as the Secretary of State⁹ may direct¹⁰.

Where it appears to the Secretary of State that:

- 1115 (a) in consequence of an injury sustained or a disease contracted by a person when he was the master of or a seaman employed in a United Kingdom ship, he ceased to be employed in the ship and subsequently died¹¹; and
- 1116 (b) the death occurred in a country outside the United Kingdom during the period of one year beginning with the day on which he so ceased¹²,

the Secretary of State may arrange for an inquiry into the cause of the death to be held by a superintendent or proper officer¹³.

Where it appears to the Secretary of State that a person may:

- 1117 (i) have died in a United Kingdom ship or in a boat or life-raft from such a ship¹⁴; or
- 1118 (ii) have been lost from such a ship, boat or life-raft and have died in consequence of being so lost¹⁵,

the Secretary of State may arrange for an inquiry to be held by a superintendent or proper officer into whether the person died as mentioned above and, if the superintendent or officer finds that he did, into the cause of the death¹⁶.

The superintendent or proper officer holding the inquiry has, for the purpose of the inquiry, the powers conferred¹⁷ on an inspector¹⁸.

The person holding the inquiry must make a report of his findings to the Secretary of State who must make the report available¹⁹:

- 1119 (A) if the person to whom the report relates was employed in the ship and a person was named as his next of kin in the crew agreement²⁰ or list of the crew in which the name of the person to whom the report relates last appeared, to the person so named²¹;

1120 (B) in any case, to any person requesting it who appears to the Secretary of State to be interested²².

However, no such inquiry may be held²³ where a coroner's inquest is to be held²⁴.

1 As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 Merchant Shipping Act 1995 s 271(1)(a).

3 As to the meaning of 'master' see PARA 424.

4 As to the meaning of 'seaman' see PARA 424.

5 Merchant Shipping Act 1995 s 271(1)(b).

6 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

7 As to the meaning of 'proper officer' see PARA 48 note 11.

8 As to the meaning of 'port' see PARA 46 note 12.

9 As to the Secretary of State see PARA 38.

10 Merchant Shipping Act 1995 s 271(1). As to the Secretary of State's power to give directions see PARA 41.

11 Merchant Shipping Act 1995 s 271(2)(a).

12 Merchant Shipping Act 1995 s 271(2)(b).

13 Merchant Shipping Act 1995 s 271(2). This provision is subject to s 271(6) (see the text and notes 23-24): see s 271(2).

14 Merchant Shipping Act 1995 s 271(3)(a).

15 Merchant Shipping Act 1995 s 271(3)(b).

16 Merchant Shipping Act 1995 s 271(3). This provision is subject to s 271(6) (see the text and notes 23-24): see s 271(3).

17 le by the Merchant Shipping Act 1995 s 259 (see PARA 49): see s 271(4).

18 Merchant Shipping Act 1995 s 271(4).

19 Merchant Shipping Act 1995 s 271(5).

20 As to the meaning of 'crew agreement' see PARA 450.

21 Merchant Shipping Act 1995 s 271(5)(a).

22 Merchant Shipping Act 1995 s 271(5)(b).

23 le under the Merchant Shipping Act 1995 s 271: see s 271(6).

24 Merchant Shipping Act 1995 s 271(6).

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874. Reports of and inquiries into injuries.

Where the master¹ or a member of the crew of a United Kingdom fishing vessel² is injured during a voyage, an inquiry into the cause and nature of the injury may be held by a superintendent³ or proper officer⁴.

The superintendent or proper officer holding such an inquiry has, for the purposes of the inquiry, the powers conferred⁵ on a Departmental inspector⁶ and he must make a report of his findings to the Secretary of State⁷.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'United Kingdom fishing vessel' see PARA 230.

3 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

4 Merchant Shipping Act 1995 s 272(1). As to the meaning of 'proper officer' see PARA 48 note 11.

As to the powers of inspectors appointed under the Merchant Shipping Act 1995 s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 272 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 272 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 46 et seq.

5 Ie by the Merchant Shipping Act 1995 s 259 (see PARA 49): see s 272(2).

6 As to the meaning of 'Departmental officer' see PARA 47 note 11.

7 Merchant Shipping Act 1995 s 272(2).

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875. Transmission of particulars of deaths on ships.

Where:

- 1121 (1) an inquest is held into a death or a post-mortem examination is made of a dead body as a result of which the coroner is satisfied that an inquest is unnecessary¹; and
- 1122 (2) it appears to the coroner that the death in question constitutes² the death of a person occurring in a ship or of a person employed in a ship³,

it is the duty of the coroner to send to the Registrar General of Shipping and Seamen⁴ particulars in respect of the deceased of a kind prescribed by regulations made by the Secretary of State⁵.

1 Merchant Shipping Act 1995 s 273(a). As to coroner's inquests generally see **CORONERS** vol 9(2) (2006 Reissue) PARA 949 et seq.

2 ie is such as is mentioned in the Merchant Shipping Act 1995 s 108(2) (required returns as to deaths on ship etc) (see PARA 654) or in s 108(2) as extended, with or without amendments, by virtue of s 307 (see PARA 18): see s 273(b).

3 Merchant Shipping Act 1995 s 273(b).

4 As to the Registrar General of Shipping and Seamen see PARA 61.

5 Merchant Shipping Act 1995 s 273. As to the Secretary of State see PARA 38.

At the date at which this volume states the law no such regulations had been made under s 273 but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577 (see PARA 655) have effect as if so made. As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.

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10. SALVAGE AND WRECK

(1) SALVAGE

(i) In general

876. The common law.

The main body of English common law relating to civil salvage was decided during the nineteenth century, to a large extent through the judgments of Dr Lushington¹, and subsequently developed during the twentieth century². Apart from augmentation by a few statutory provisions³, English common law has hitherto⁴ formed the sole basis for the interpretation of English salvage law⁵.

1 For an appreciation of the contribution made to English salvage law by Dr Lushington see SM Waddams 'Dr Lushington's contribution to the law of maritime salvage (1838-67)' [1989] LMCLQ 59.

2 As to the common law relating to salvage see PARA 924 et seq.

3 See eg the Merchant Shipping Act 1894 ss 547-565 (repealed); the Maritime Conventions Act 1911 ss 6-8 (repealed).

4 As to the relationship between the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) and the pre-existing common law see PARA 880.

5 For a review of the law of salvage see *The Goring* [1988] AC 831 at 834 et seq, [1988] 1 All ER 641 at 643 et seq, [1988] 1 Lloyd's Rep 397 at 399 et seq, HL, per Lord Brandon of Oakbrook.

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877. The Salvage Convention 1910.

The International Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea 1910¹ was signed in Brussels on 23 September 1910. The greater part of the 1910 Convention was never given statutory effect in English law, although certain of its provisions were enacted in the Maritime Conventions Act 1911². It seems to have been well recognised that the 1910 Convention reflected the general principles of English salvage law already being applied by the Admiralty courts in England³.

1 I.e. the International Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea 1910 (Brussels, 23 September 1910; TS 4 (1913); Cd 6677) (the 'Salvage Convention 1910').

2 I.e. the Salvage Convention 1910 art 6 (apportionment of salvage remuneration between (inter alios) owner, master and crew), art 10 (two-year time limit for bringing salvage actions) and art 11 (duty of master to render assistance to persons found at sea in danger of being lost) were enacted in the Maritime Conventions Act 1911 ss 6-8 (repealed).

3 See eg the references to the Salvage Convention 1910 art 1 in *The Goring* [1988] AC 831 at 836, [1988] 1 All ER 641 at 646, [1988] 1 Lloyd's Rep 397 at 402, HL (salvage in non-tidal waters).

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878. The International Convention on Salvage 1989.

The International Convention on Salvage 1989¹ was open for signature at the headquarters of the International Maritime Organisation² from 1 July 1989 to 30 June 1990 and thereafter remains open for accession³.

States may express their consent to be bound by the 1989 Convention by⁴:

- 1001 (1) signature without reservation as to ratification, acceptance or approval⁵;
- 1002 (2) signature subject to ratification, acceptance or approval, followed by acceptance or approval⁶; or
- 1003 (3) accession⁷.

Ratification, acceptance, approval or accession is effected by the deposit of an instrument to that effect with the Secretary General of the International Maritime Organisation⁸.

The International Convention on Salvage 1989 entered into force on 1 July 1996, one year after the date on which 15 states had expressed their consent to be bound by it⁹. For a state which expresses its consent to be so bound after the conditions for entry into force thereof have been met, such consent takes effect one year after the date of expression of such consent¹⁰.

Any state may, at the time of signature, ratification, acceptance, approval or accession, reserve the right not to apply certain provisions of the International Convention on Salvage 1989¹¹.

The International Convention on Salvage 1989 may be denounced by any state party at any time after the expiry of one year from the date on which that Convention enters into force for that state¹². Denunciation is effected by the deposit of an instrument of denunciation with the Secretary General of the International Maritime Organisation¹³. A denunciation takes effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary General¹⁴.

A conference for the purpose of revising or amending the International Convention on Salvage 1989 may be convened by the International Maritime Organisation¹⁵. The Secretary General of the International Maritime Organisation must convene a conference of states parties for revising or amending that Convention, at the request of eight states parties, or one-fourth of the states parties, whichever is the higher figure¹⁶. Any consent to be bound by the International Convention on Salvage 1989 after the date of entry into force of an amendment to that Convention is deemed to apply to that Convention as amended¹⁷.

The International Convention on Salvage 1989 must be deposited with the Secretary General of the International Maritime Organisation¹⁸; and he must inform all states which have signed that Convention or acceded thereto, and all members of the International Maritime Organisation, of:

- 1004 (a) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof¹⁹;
- 1005 (b) the date of the entry into force of that Convention²⁰;
- 1006 (c) the deposit of any instrument of denunciation of that Convention together with the date on which it is received and the date on which the denunciation takes effect²¹;
- 1007 (d) any amendment duly adopted²²;

1008 (e) the receipt of any reservation, declaration or notification made under that Convention²⁴.

The Secretary General must also transmit certified true copies of the International Convention on Salvage 1989 to all states which have signed that Convention or acceded thereto²⁵.

As soon as the International Convention on Salvage 1989 entered into force, a certified true copy thereof had to be transmitted by the Depositary to the Secretary General of the United Nations for registration and publication in accordance with²⁶ the Charter of the United Nations²⁷.

The International Convention on Salvage 1989 is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic²⁸.

1 le the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) (the 'International Convention on Salvage 1989'). As to the enactment of the 1989 Convention in the United Kingdom see PARAS 879, 891; and as to the interpretation of the 1989 Convention and the relationship between the 1989 Convention and the pre-existing common law see PARA 880.

2 As to the International Maritime Organisation see PARA 13.

3 International Convention on Salvage 1989 art 28(1).

4 International Convention on Salvage 1989 art 28(2).

5 International Convention on Salvage 1989 art 28(2)(a).

6 International Convention on Salvage 1989 art 28(2)(b).

7 International Convention on Salvage 1989 art 28(2)(c).

8 International Convention on Salvage 1989 art 28(3).

9 International Convention on Salvage 1989 art 29(1).

10 International Convention on Salvage 1989 art 29(2).

11 See the International Convention on Salvage 1989 art 30; and PARA 919. Several countries, including the United Kingdom, have entered such reservations: see PARA 920.

12 International Convention on Salvage 1989 art 31(1).

13 International Convention on Salvage 1989 art 31(2).

14 International Convention on Salvage 1989 art 31(3).

15 International Convention on Salvage 1989 art 32(1).

16 International Convention on Salvage 1989 art 32(2).

17 International Convention on Salvage 1989 art 32(3).

18 International Convention on Salvage 1989 art 33(1).

19 International Convention on Salvage 1989 art 33(2)(a)(i).

20 International Convention on Salvage 1989 art 33(2)(a)(ii).

21 International Convention on Salvage 1989 art 33(2)(a)(iii).

22 le in conformity with the International Convention on Salvage 1989 art 32 (see the text and notes 15-17): see art 33(2)(a)(iv).

23 International Convention on Salvage 1989 art 33(2)(a)(iv).

24 International Convention on Salvage 1989 art 33(2)(a)(v).

25 International Convention on Salvage 1989 art 33(2)(b).

26 le in accordance with the Charter of the United Nations (San Francisco, 26 June 1945; TS 67 (1946); Cmd 7015) art 102 (see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 105): see the International Convention on Salvage 1989 art 33(3).

27 International Convention on Salvage 1989 art 33(3).

28 International Convention on Salvage 1989 art 34.

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879. The Merchant Shipping Act 1995 provisions relating to salvage.

The Merchant Shipping Act 1995¹ contains:

1009 (1) the re-enactment of the International Convention on Salvage 1989² in English law³; and

1010 (2) provisions relating to the valuation of property by the receiver of wrecks⁴, the detention of property liable for salvage by the receiver of wrecks⁵, the sale of detained property by the receiver of wrecks⁶, the apportionment of salvage by the receiver of wrecks⁷ (or, as the case may be, by the court⁸), and salvage rights either against the Crown or in favour of the Crown⁹.

1 The Merchant Shipping Act 1995 Pt IX Ch I (ss 224-230) (salvage) (see PARA 884 et seq).

2 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) (the 'International Convention on Salvage 1989'). As to the enactment of the 1989 Convention in the United Kingdom see also PARA 891; and as to the interpretation of the 1989 Convention and the relationship between the 1989 Convention and the pre-existing common law see PARA 880.

3 See the Merchant Shipping Act 1995 s 224, Sch 11; and PARA 891 et seq.

4 See the Merchant Shipping Act 1995 s 225; and PARA 884.

5 See the Merchant Shipping Act 1995 s 226; and PARA 885.

6 See the Merchant Shipping Act 1995 s 227; and PARA 886.

7 See the Merchant Shipping Act 1995 s 228; and PARA 887.

8 See the Merchant Shipping Act 1995 s 229; and PARA 888.

9 See the Merchant Shipping Act 1995 s 230; and PARA 890.

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880. Relationship between the International Convention on Salvage 1989 and the pre-existing common law.

There is no authority in point as to whether the common law of salvage¹ has been superseded in its entirety by the International Convention on Salvage 1989², and there is no statement in the Convention to suggest that its provisions are intended to be exhaustive of salvage law³.

It is apprehended that it would still be correct for English courts to refer to the pre-existing principles of salvage law in interpreting and applying the 1989 Convention⁴, provided that, in doing so, the courts proceed on the basis that the 1989 Convention now represents the law and that pre-existing common law principles are to be considered in relation to the 1989 Convention and not vice versa⁵. It is submitted also that domestic laws may supplement Convention rights to the extent that the former do not conflict with the latter⁶.

1 As to the common law relating to salvage see PARAS 876, 924 et seq.

2 I.e. the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526). As to the enactment of the 1989 Convention in the United Kingdom see PARA 891; and as to the contents of the 1989 Convention see PARA 892 et seq.

3 See John Reeder (ed) *Brice on Maritime Law of Salvage* (4th Edn, 2003) p 23.

4 I.e. following *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, [1993] 1 All ER 42, HL; and see **STATUTES** vol 44(1) (Reissue) PARA 1421. Where statutory provisions are ambiguous, it is legitimate, in resolving any ambiguity, to have recourse to the travaux préparatoires of the Convention: *Gatoil International Inc v Arkwright-Boston Manufacturers Mutual Insurance Co* [1985] AC 255, [1985] 1 All ER 129, sub nom *The Sandrina* [1985] 1 Lloyd's Rep 181, HL. See also John Reeder (ed) *Brice on Maritime Law of Salvage* (4th Edn, 2003) pp 15-18.

5 As to treaty Acts and their interpretation generally see **STATUTES** vol 44(1) (Reissue) PARAS 1222, 1426.

6 See John Reeder (ed) *Brice on Maritime Law of Salvage* (4th Edn, 2003) pp 23-24.

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(ii) Jurisdiction

881. Admiralty jurisdiction regarding salvage claims.

The Admiralty jurisdiction of the High Court¹ includes jurisdiction to hear and determine any claim:

- 1011 (1) under the Salvage Convention 1989²;
- 1012 (2) under any contract for or in relation to salvage services³; or
- 1013 (3) in the nature of salvage not falling within head (1) or head (2) above⁴,

or any corresponding claim in connection with an aircraft⁵. The jurisdiction extends to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and to all claims wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land)⁶.

The High Court originally acquired jurisdiction in respect of claims for salvage of property from the inherent jurisdiction of the Admiralty Court⁷. The jurisdiction to award salvage for services in the preservation of life is, except where some property is also salvaged, entirely statutory⁸.

1 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq. As to the mode of exercise of this jurisdiction see the Supreme Court Act 1981 s 21; and PARAS 93-94. The Admiralty jurisdiction of the High Court extends also to hovercraft: see PARA 87.

2 Supreme Court Act 1981 s 20(1)(a), (2)(j)(i) (s 20(2)(j) substituted by the Merchant Shipping (Salvage and Pollution) Act 1994 s 1(6), Sch 2 para 6(2)). For these purposes, the 'Salvage Convention 1989' means the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) (as to which see PARA 8) as it has effect under the Merchant Shipping Act 1995 s 224 (as to which see PARAS 879, 891 et seq); Supreme Court Act 1981 s 20(6)(a) (s 20(6) substituted by the Merchant Shipping (Salvage and Pollution) Act 1994 Sch 2 para 6(3); Supreme Court Act 1981 s 20(6)(a) amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 59(2) (c)).

3 Supreme Court Act 1981 s 20(1)(a), (2)(j)(ii) (as substituted: see note 2). For these purposes, the reference to salvage services includes services rendered in saving life from a ship, and the reference to any claim under any contract for or in relation to salvage services includes any claim arising out of such a contract whether or not arising during the provision of the services: s 20(6)(b) (as substituted: see note 2). As to the meaning of 'ship' for these purposes see PARA 85 note 7. As to salvage generally see PARA 876 et seq.

4 Supreme Court Act 1981 s 20(1)(a), (2)(j)(iii) (as substituted: see note 2). As to whether the wording of head (3) in the text preserves the common law of salvage which predated the enactment of the International Convention on Salvage 1989 into English law see PARA 880.

5 Supreme Court Act 1981 s 20(1)(a), (2)(j) (as substituted: see note 2). The reference to a corresponding claim in connection with an aircraft is a reference to any claim corresponding to any claim in head (1) or in head (2) in the text which is available under the Civil Aviation Act 1982 s 87 (application of law of wreck and salvage to aircraft) (see **AIR LAW** vol 2 (2008) PARA 599); Supreme Court Act 1981 s 20(6)(c) (as substituted: see note 2). As to salvage in respect of aircraft see PARA 114.

6 See the Supreme Court Act 1981 s 20(7)(a), (b); and PARA 86.

7 As to the development of the law that is administered in Admiralty see PARA 80 et seq.

8 See PARA 903 et seq.

UPDATE

881 Admiralty jurisdiction regarding salvage claims

NOTES--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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882. Preservation of Cinque ports' jurisdiction in relation to salvage.

Nothing in the Merchant Shipping Act 1995 provisions relating to salvage¹ prejudices or affects any jurisdiction or powers of Lord Warden or any officers of the Cinque ports² or of any court of those ports or of any court having concurrent jurisdiction within the boundaries of those ports; and disputes as to salvage arising without those boundaries are to be determined³ in the manner in which they have been hitherto determined⁴.

1 In the Merchant Shipping Act 1995 Pt IX (ss 224-255) (see PARA 884 et seq): see s 314(3), Sch 14 para 11.

2 As to the boundaries of the jurisdiction of the Lord Warden of the Cinque ports see the Cinque Ports Act 1821 s 18; and PARA 210. As to the Court of Admiralty of the Cinque Ports, and as to the Cinque Ports Salvage Commissioners, see PARA 210.

3 In subject to the Salvage Convention as set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 (see PARA 891 et seq): see Sch 14 para 11. As to the meaning of 'Salvage Convention' see PARA 891 note 1.

4 Merchant Shipping Act 1995 Sch 14 para 11.

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(iii) The Merchant Shipping Act 1995

A. MEANING OF 'SALVAGE'

883. Meaning of 'salvage'.

'Salvage' may signify either the service rendered by a salvor or the reward payable to him for his service¹.

For the purposes of the Merchant Shipping Act 1995², 'salvage' includes, subject to the Salvage Convention³, all expenses properly incurred by the salvor⁴ in the performance of the salvage services⁵.

Liability for death or personal injury resulting from negligence cannot be excluded or restricted in a contract of marine salvage⁶.

1 The law of salvage which is here discussed is sometimes termed 'civil salvage', to distinguish it from 'prize salvage' (or 'salvage recapture'), which is payment in respect of ships, aircraft or goods belonging to a British subject which are recaptured after having been taken as prize by the enemy: see **PRIZE** vol 36(2) (Reissue) PARA 842 et seq. See also Abbott's *Law of Merchant Ships and Seamen* (14th Edn) 960 et seq. The term 'salvage' is also applied to the salvaged property in matters relating to insurance: see eg **INSURANCE** vol 25 (2003 Reissue) PARA 640 et seq. As to the expenses of the salvor see PARA 957.

2 In the Merchant Shipping Act 1995 Pt IX (ss 224-255) (see PARA 884 et seq): see s 255(1).

3 As to the meaning of 'Salvage Convention' see PARA 891 note 1.

4 For these purposes, 'salvor' means, in the case of salvage services rendered by the officers or crew or part of the crew of any ship belonging to Her Majesty, the person in command of the ship: Merchant Shipping Act 1995 s 255(1). As to the meaning of 'ship' see PARA 229. As to government ships see PARA 20.

5 Merchant Shipping Act 1995 s 255(1). Cf the meaning of 'salvage operation' in the Salvage Convention (see PARA 893).

6 See the Unfair Contract Terms Act 1977 ss 1(2), 2(1), Sch 1 para 2(a); and **CONTRACT** vol 9(1) (Reissue) PARA 828.

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B. POWERS OF RECEIVER OF WRECK

884. Valuation of property by receiver.

In the absence of agreement, the value of the salvaged property is usually assessed¹ at the time and place when and where the salvage operations ended².

Where any dispute as to salvage³ arises, the receiver⁴ may, on the application of either party, appoint a valuer to value the property⁵.

When the valuation has been made, the receiver must give copies of it to both parties⁶. A copy of the valuation purporting to be signed by the valuer, and to be certified as a true copy by the receiver, is admissible as evidence in any subsequent proceedings⁷.

There must be paid in respect of the valuation by the person applying for it such fee as the Secretary of State⁸ may direct⁹.

1 In assessing the value, allowance is made for any salvage reward ordered by another court to be paid to other salvors out of the proceeds of the salvaged property: *The Antelope* (1873) LR 4 A & E 33, 1 Asp MLC 513.

2 *The George Dean* (1857) Sw 290; *The Stella* (1867) LR 1 A & E 340; *The Georg* [1894] P 330, 7 Asp MLC 476; *The Germania* [1904] P 131, 9 Asp MLC 538.

3 As to the meaning of 'salvage' see PARA 883.

4 For these purposes, 'receiver' means a receiver of wrecks appointed under the Merchant Shipping Act 1995 s 248 (see PARA 988): s 255(1).

5 Merchant Shipping Act 1995 s 225(1). Section 225 is excluded by s 230 (salvage claims against the Crown): see PARA 890.

6 Merchant Shipping Act 1995 s 225(2). See also note 5.

7 Merchant Shipping Act 1995 s 225(3). See also note 5. As to admissibility of documents in evidence generally see PARA 1110.

8 As to the Secretary of State see PARA 38.

9 Merchant Shipping Act 1995 s 225(4). See also note 5. As to the Secretary of State's power to give directions see PARA 41.

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885. Detention of property liable to salvage by receiver.

Where salvage¹ is due to any person², the receiver³ must⁴:

1014 (1) if the salvage is due in respect of services rendered in assisting a vessel⁵, or in saving life from a vessel, or in saving the cargo and equipment of a vessel, detain the vessel and cargo or equipment⁶; and

1015 (2) if the salvage is due in respect of the saving of any wreck⁷, and the wreck is not sold as unclaimed⁸, detain the wreck⁹.

The receiver must detain the vessel and the cargo and equipment, or the wreck, as the case may be, until payment is made for salvage, or process is issued for the arrest or detention of the property by the court¹⁰. However, the receiver may release any property so detained if security is given¹¹:

1016 (a) to his satisfaction¹²; or

1017 (b) where the claim for salvage exceeds £5,000, and any question is raised as to the sufficiency of the security, to the satisfaction of the court¹³.

Any security so given for salvage to an amount exceeding £5,000 may be enforced by the court in the same manner as if bail had been given in that court¹⁴.

1 As to the meaning of 'salvage' see PARA 883.

2 Ie under the Merchant Shipping Act 1995 Pt IX Ch I (ss 224-230) (see PARAS 884, 886 et seq): see s 226(1).

The words 'due to any person under' in s 226(1) appear to cover any salvage which the Merchant Shipping Act 1995 contemplates being awarded by the court mentioned in it, the jurisdiction of which is compared or recognised by it: see *The Fulham* [1898] P 206 at 213, 8 Asp MLC 425 at 427 (discussing equivalent provision made under the Merchant Shipping Act 1894).

3 As to the meaning of 'receiver' see PARA 884 note 4.

4 Merchant Shipping Act 1995 s 226(1).

Section 226 is excluded by s 230 (salvage claims against the Crown): see PARA 890. Nothing in the Supreme Court Act 1981 ss 20-23 (Admiralty jurisdiction) (see PARA 85 et seq) affects the provisions of the Merchant Shipping Act 1995 s 226: see the Supreme Court Act 1981 s 24(2)(b); and PARA 85.

5 For these purposes, 'vessel' includes any ship or boat, or any other description of vessel used in navigation: Merchant Shipping Act 1995 s 255(1). As to the meaning of 'ship' see PARA 229.

6 Merchant Shipping Act 1995 s 226(1)(a). See note 4.

7 As to the meaning of 'wreck' see PARA 987.

8 Ie under the Merchant Shipping Act 1995 Pt IX Ch I (ss 224-230) (see PARAS 884, 886 et seq): see s 226(1)(b). See note 4.

9 Merchant Shipping Act 1995 s 226(1)(b). See note 4.

10 Merchant Shipping Act 1995 s 226(2). For these purposes, 'court' means the High Court: s 226(5). See note 4. As to the sale of detained property see PARA 886.

11 Merchant Shipping Act 1995 s 226(3). See note 4.

12 Merchant Shipping Act 1995 s 226(3)(a). See note 4.

13 Merchant Shipping Act 1995 s 226(3)(b). See note 4. After release salvors may not detain or arrest the property: *The Lady Katherine Barham* (1861) Lush 404.

14 Merchant Shipping Act 1995 s 226(4). See note 4.

UPDATE

885 Detention of property liable to salvage by receiver

NOTE 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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886. Sale of detained property by receiver.

The receiver¹ may sell any detained property² if the persons liable to pay the salvage³ in respect of which the property is detained are aware of the detention, in the following cases⁴, namely:

- 1018 (1) where the amount is not disputed, and payment of the amount due is not made within 20 days after the amount is due⁵;
- 1019 (2) where the amount is disputed, but no appeal lies from the first court to which the dispute is referred, and payment is not made within 20 days after the decision of the first court⁶;
- 1020 (3) where the amount is disputed and an appeal lies from the decision of the first court to some other court, and within 20 days of the decision of the first court neither payment of the sum due is made nor proceedings are commenced for an appeal⁷.

The proceeds of sale of detained property must, after payment of the expenses of the sale, be applied by the receiver in payment of the expenses, fees and salvage and any excess must be paid to the owners of the property or any other persons entitled to it⁸.

1 As to the meaning of 'receiver' see PARA 884 note 4.

2 For these purposes, 'detained property' means property detained by the receiver under the Merchant Shipping Act 1995 s 226(2) (see PARA 885): s 227(4).

3 As to the meaning of 'salvage' see PARA 883.

4 Merchant Shipping Act 1995 s 227(1). Section 227 is excluded by s 230 (salvage claims against the Crown): see PARA 890.

5 Merchant Shipping Act 1995 s 227(2)(a). See note 4.

6 Merchant Shipping Act 1995 s 227(2)(b). See note 4.

7 Merchant Shipping Act 1995 s 227(2)(c). See note 4.

8 Merchant Shipping Act 1995 s 227(3). See note 4.

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C. APPORTIONMENT OF SALVAGE

887. Apportionment of salvage under £5,000 by receiver.

Where:

1021 (1) the aggregate amount of salvage¹ payable in respect of salvage services rendered in United Kingdom waters² has been finally determined and does not exceed £5,000³; but

1022 (2) a dispute arises as to the apportionment of the amount among several claimants⁴,

the person liable to pay the amount may apply to the receiver⁵ for leave to pay it to him⁶.

The receiver must, if he thinks fit, receive the amount and, if he does, he must give the person paying it a certificate stating the amount paid and the services in respect of which it is paid⁷. Such a certificate is a full discharge and indemnity to the person by whom it was paid, and to his vessel⁸, cargo, equipment and effects against the claims of all persons in respect of the services mentioned in the certificate⁹.

The receiver must with all convenient speed distribute any amount so received by him¹⁰ among the persons entitled to it, on such evidence, and in such shares and proportions, as he thinks fit¹¹. Any such decision by the receiver must be made on the basis of the criteria for fixing the reward contained in the Salvage Convention¹².

The receiver may retain any money which appears to him to be payable to any person who is absent¹³.

A distribution so made by a receiver¹⁴ is final and conclusive as against all persons claiming to be entitled to any part of the amount distributed¹⁵.

1 As to the meaning of 'salvage' see PARA 883.

2 As to the meaning of 'United Kingdom waters' see PARA 48 note 10. As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping Act 1995 s 228(1)(a).

4 Merchant Shipping Act 1995 s 228(1)(b). As to apportionment by the court where the aggregate amount exceeds £5,000 see PARA 888. As to the Admiralty jurisdiction of the High Court in relation to the salvage of property see also PARA 115 et seq.

5 As to the meaning of 'receiver' see PARA 884 note 4.

6 Merchant Shipping Act 1995 s 228(1).

7 Merchant Shipping Act 1995 s 228(2).

8 As to the meaning of 'vessel' see PARA 885 note 5.

9 Merchant Shipping Act 1995 s 228(3).

10 le under the Merchant Shipping Act 1995 s 228: see s 228(4).

11 Merchant Shipping Act 1995 s 228(4).

12 Merchant Shipping Act 1995 s 228(5). The text refers to the criteria contained in the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13 (see PARA 904) (the 'Salvage Convention'): see the Merchant Shipping Act 1995 s 228(5). As to the 'Salvage Convention' see PARA 891 note 1.

13 Merchant Shipping Act 1995 s 228(6).

14 le under the Merchant Shipping Act 1995 s 228: see s 228(7).

15 Merchant Shipping Act 1995 s 228(7).

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888. Apportionment by the court.

Where:

- 1023 (1) the aggregate amount of salvage¹ payable in respect of salvage services rendered in United Kingdom waters² has been finally determined and exceeds £5,000³; or
- 1024 (2) the aggregate amount of salvage payable in respect of salvage services rendered outside United Kingdom waters (of whatever amount) has been finally determined⁴; but
- 1025 (3) in either case, any delay or dispute arises as to the apportionment of the amount⁵,

the court⁶ may cause the amount of salvage to be apportioned among the persons entitled to it in such manner as it thinks just⁷. Any such decision of the court must be made on the basis of the criteria for fixing the reward in the Salvage Convention⁸.

For the purpose of making that apportionment, the court may:

- 1026 (a) appoint any person to carry that apportionment into effect⁹;
- 1027 (b) compel any person in whose hands or under whose control the amount may be to distribute it or to pay it into court to be dealt with as the court directs¹⁰; and
- 1028 (c) issue such process as it thinks fit¹¹.

1 As to the meaning of 'salvage' see PARA 883.

2 As to the meaning of 'United Kingdom waters' see PARA 48 note 10. As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping Act 1995 s 229(1)(a).

4 Merchant Shipping Act 1995 s 229(1)(b).

5 Merchant Shipping Act 1995 s 229(1)(c).

6 For these purposes, 'court' means the High Court: Merchant Shipping Act 1995 s 229(4).

7 Merchant Shipping Act 1995 s 229(1). As to apportionment by the receiver where the aggregate amount does not exceed £5,000 see PARA 887. As to the Admiralty jurisdiction of the High Court in relation to the salvage of property see also PARA 115 et seq.

In *The Nicolaou Georgios* [1952] 2 Lloyd's Rep 215, where the amount had been determined by an arbitrator, who had also made an apportionment, and a dispute arose as to the apportionment, the salvage award was made a rule of court, and an inquiry was directed before the registrar to determine into which classes of the apportionment certain members of the crew fell.

8 Merchant Shipping Act 1995 s 229(2). The text refers to the criteria contained in the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13 (see PARA 904) (the 'Salvage Convention'): see the Merchant Shipping Act 1995 s 229(2). As to the 'Salvage Convention' see PARA 891 note 1.

9 Merchant Shipping Act 1995 s 229(3)(a).

- 10 Merchant Shipping Act 1995 s 229(3)(b).
- 11 Merchant Shipping Act 1995 s 229(3)(c).

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889. Proceedings for apportionment.

All salvage claims¹ must be started in the Admiralty Court²; the power to apportion amongst the salvors the amount of salvage remuneration was and is incident to the jurisdiction of the Admiralty Court in claims for salvage³.

1 For these purposes, 'admiralty claim' means a claim within the Admiralty jurisdiction of the High Court as set out in the Supreme Court Act 1981 s 20 (see PARA 85 et seq): see CPR 61.1(2)(a); and PARA 91 note 3. As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85. As to the assignment of business to the Admiralty Court see PARA 91.

2 See CPR 61.2(1)(d); and PARA 91. For these purposes, 'Admiralty Court' means the Admiralty Court of the Queen's Bench Division of the High Court of Justice: see CPR 61.1(2)(b); and PARA 91 note 3.

3 The court's power to apportion the amount of salvage remuneration amongst the salvors is now derived from the Merchant Shipping Act 1995 s 229(1)-(3): see PARA 888. As to the Admiralty jurisdiction of the High Court in relation to salvage etc see PARAS 113-114.

The apportionment of salvage reward may be requested in the course of or promptly after the close of an ordinary salvage action by parties interested in the award: see eg *The Firethorn* (1948) 81 Ll L Rep 178. Reasonable time will be allowed to a seaman: *The Spirit of the Age* (1857) Sw 286 at 287.

UPDATE

889 Proceedings for apportionment

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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D. CROWN APPLICATION

890. Salvage claims against the Crown; Crown rights of salvage and regulation thereof.

Subject to the statutory provisions relating to the exclusion of proceedings in rem against the Crown¹, so far as consistent with the Salvage Convention², the law relating to civil salvage³, whether of life or property, except for the provisions relating to the sale of detained property by the receiver⁴, the apportionment of salvage under £5,000 by the receiver⁵ and the apportionment of salvage by the court⁶, apply in relation to salvage services in assisting any of Her Majesty's ships⁷, or in saving life therefrom, or in saving any cargo or equipment belonging to Her Majesty in right of Her government in the United Kingdom, in the same manner as if the ship, cargo or equipment belonged to a private person⁸.

Where salvage services are rendered by or on behalf of Her Majesty, whether in right of Her government in the United Kingdom or otherwise, Her Majesty is entitled to claim salvage in respect of those services to the same extent as any other salvor, and has the same rights and remedies in respect of those services as any other salvor⁹.

No claim for salvage services by the commander or crew, or part of the crew, of any of Her Majesty's ships may be finally adjudicated upon without the consent of the Secretary of State¹⁰ to the prosecution of the claim¹¹; and any document purporting to give the consent of the Secretary of State for those purposes and to be signed by an officer of the Ministry of Defence is evidence of that consent¹². If a claim is prosecuted without the consent so required, the claim must be dismissed with costs¹³.

1 Ie the Crown Proceedings Act 1947 s 29 (see PARA 179): see the Merchant Shipping Act 1995 s 230(1). As to Admiralty claims in rem generally see PARA 158 et seq.

2 As to the meaning of the 'Salvage Convention' see PARA 891 note 1.

3 As to the meaning of 'salvage' see PARA 883.

4 Ie the Merchant Shipping Act 1995 s 225 (see PARA 884): see s 230(1).

5 Ie the Merchant Shipping Act 1995 s 226 (see PARA 885): see s 230(1).

6 Ie the Merchant Shipping Act 1995 s 227 (see PARA 886): see s 230(1).

7 For these purposes, 'Her Majesty's ships' has the same meaning as in the Merchant Shipping Act 1995 s 192 (see PARA 1065 note 7): s 230(7). As to the meaning of 'ship' see PARA 229.

8 Merchant Shipping Act 1995s 230(1).

9 Merchant Shipping Act 1995s 230(2).

10 As to the Secretary of State see PARA 38.

11 Merchant Shipping Act 1995s 230(3).

12 Merchant Shipping Act 1995s 230(4).

13 Merchant Shipping Act 1995s 230(5).

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(iv) The Salvage Convention 1989

A. IN GENERAL

891. The International Convention on Salvage 1989.

The provisions of the International Convention on Salvage 1989¹ have the force of law² in the United Kingdom³.

If it appears to Her Majesty in Council that the government of the United Kingdom has agreed to any revision of the Salvage Convention, She may by Order in Council make such modifications of the statutory provisions⁴ as She considers appropriate in consequence of the revision⁵; but nothing in any modification so made affects any rights or liabilities arising out of any salvage operations started or other acts done before the day on which the modification comes into force⁶. A draft of an Order in Council proposed to be so made must not be submitted to Her Majesty in Council unless the draft has been approved by a resolution of each House of Parliament⁷.

1 I.e. the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) (as to which see PARA 8), which entered into force on 1 July 1996: see PARA 878. For the purposes of the Merchant Shipping Act 1995 Pt IX (ss 224-255) (see PARAS 884 et seq, 892 et seq), 'Salvage Convention' has the meaning given by s 224(1): s 255(1).

2 As to the meaning of 'having the force of law' cf *The Hollandia* [1983] 1 AC 565, [1982] 3 All ER 1141, sub nom *The Morviken* [1983] 1 Lloyd's Rep 1, HL.

3 Merchant Shipping Act 1995 s 224(1). As to the meaning of 'United Kingdom' see PARA 17 note 3. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

The relevant provisions of the Salvage Convention are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 892 et seq): see s 224(1). However, not all the provisions of the Salvage Convention are set out therein; Sch 11 Pt I does not include art 28 (see PARA 878), art 29 (see PARA 878), art 30 (see PARA 919) or arts 31-34 (see PARA 878). The provisions of the Merchant Shipping Act 1995 s 224(2), Sch 11 Pt II (paras 1-7) (see PARA 920 et seq) have effect in connection with the Salvage Convention, and the Merchant Shipping Act 1995 s 224(1) has effect subject to the provisions of Sch 11 Pt II (paras 1-7): s 224(2). However, nothing in either s 224(1) or s 224(2) affects any rights or liabilities arising out of any salvage operations started or other acts done before 1 January 1995: s 224(4). The date of 1 January 1995 was the date on which the Merchant Shipping (Salvage and Pollution) Act 1994 s 1 (from which the Merchant Shipping Act 1995 s 224 derives) was brought into force: see the Merchant Shipping (Salvage and Pollution) Act 1994 (Commencement No 2) Order 1994, SI 1994/2971, art 2, Schedule. As respects any period before the entry into force of the Salvage Convention, any reference therein to a state party to the Salvage Convention was to be read as a reference to the United Kingdom: Merchant Shipping Act 1995 s 224(6). As to the making of Orders in Council declaring which states are parties to the Salvage Convention see PARA 892 note 3. As to the meaning of 'salvage' see PARA 883.

4 I.e. of the Merchant Shipping Act 1995 Sch 11 Pt I or Pt II (paras 1-7): see s 224(3).

5 Merchant Shipping Act 1995 s 224(3). At the date at which this volume states the law, no such Orders in Council had been made and none has effect as if so made. As to the making of Orders under the Merchant Shipping Act 1995 generally see PARA 41.

6 Merchant Shipping Act 1995 s 224(5).

7 Merchant Shipping Act 1995 s 224(7).

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892. Application of the International Convention on Salvage 1989.

The International Convention on Salvage 1989¹ applies whenever judicial or arbitral proceedings² relating to matters dealt with in the Salvage Convention are brought in a state party³.

¹ I.e. the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; as to apportionment between salvors, where the law of the flag of the vessel applies, see PARA 906; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

² For these purposes, references to judicial proceedings are references to proceedings, in England and Wales, in the High Court or the county court; and any reference to the tribunal having jurisdiction, so far as it refers to judicial proceedings, is to be construed accordingly: Merchant Shipping Act 1995 s 224(2), Sch 11 Pt II para 6. As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

³ International Convention on Salvage 1989 art 2. See note 1. An Order in Council made for these purposes and declaring that any state specified in the Order is a party to the Salvage Convention in respect of a specified country is conclusive evidence, subject to the provisions of any subsequent Order made for these purposes, that the state is a party to the Salvage Convention in respect of that country: Merchant Shipping Act 1995 Sch 11 Pt II para 7(1). For these purposes, 'country' includes territory: Sch 11 Pt II para 7(2). At the date at which this volume states the law, no such Order in Council had been made and none has effect as if so made. As to the meaning of references in the Salvage Convention to a state party as respects any period before the entry into force of the Salvage Convention see PARA 891 note 3.

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893. Meaning of 'salvage operation'.

For the purposes of the International Convention on Salvage 1989¹, 'salvage operation'² means any act or activity undertaken to assist a vessel³ or any other property⁴ in danger⁵ in navigable waters or in any other waters whatsoever⁶.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 'Salvor' is not defined in the International Convention on Salvage 1989 but presumably means any person who performs salvage operations which have had a useful result and is not precluded under the provisions of the Salvage Convention from claiming the reward. Cf the meaning of 'salvor' in the Merchant Shipping Act 1995 s 255(1) (as to which see PARA 883 note 4).

3 For these purposes, 'vessel' means any ship or craft or any structure capable of navigation: see the International Convention on Salvage 1989 art 1(b). In this context, see also *Gas Float Whitton No 2* [1895] P 301, DC; on appeal [1896] P 42, 8 Asp MLC 110, CA; affd sub nom *Wells v Gas Float Whitton No 2 (Owners)*, *The Gas Float Whitton No 2* [1897] AC 337, 8 Asp MLC 272, HL (cited in PARA 926). As to the exclusion of platforms and drilling units on location see PARA 894; as to the exclusion of state-owned vessels see PARA 895; and as to the reservation in the case of maritime cultural property of prehistoric, archaeological or historic interest situated on the sea bed see PARA 919.

4 For these purposes, 'property' means any property not permanently and intentionally attached to the shoreline and includes freight at risk: International Convention on Salvage 1989 art 1(c).

5 The traditional requirement of danger to property is thus preserved. As to danger to property at common law see PARAS 928, 929.

6 International Convention on Salvage 1989 art 1(a). See note 1. Thus, under art 1(a) salvage is not restricted to tidal waters. The provisions of the Salvage Convention do not, however, apply to a salvage operation which takes place in inland waters of the United Kingdom and in which all the vessels involved are of inland navigation, and to a salvage operation which takes place in inland waters of the United Kingdom and in which no vessel is involved: see the Merchant Shipping Act 1995 s 224(2), Sch 11 Pt II para 2; and PARA 920. It is submitted, therefore, that the decision in *The Goring* [1988] AC 831, [1988] 1 All ER 641, [1988] 1 Lloyd's Rep 397, HL (salvage in non-tidal waters) still applies.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/A. IN GENERAL/894. Application of the International Convention on Salvage 1989 to platforms and drilling units.

894. Application of the International Convention on Salvage 1989 to platforms and drilling units.

The International Convention on Salvage 1989¹ does not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources².

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 International Convention on Salvage 1989 art 3. See note 1. Thus, fixed or floating platforms or mobile offshore drilling units which are not on location engaged in the exploration, exploitation or production of sea-bed mineral resources may be the subject of salvage.

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895. Application of the International Convention on Salvage 1989 to state-owned vessels.

The International Convention on Salvage 1989¹ does not apply² to warships or other non-commercial vessels³ owned or operated by a state and entitled, at the time of salvage operations⁴, to sovereign immunity under generally recognised principles of international law unless that state decides otherwise⁵.

Where a state party⁶ decides to apply the Salvage Convention to such warships or other vessels⁷, it must notify the Secretary General⁸ thereof specifying the terms and conditions of such application⁹.

1 I.e. the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 I.e. without prejudice to the International Convention on Salvage 1989 art 5 (salvage operations by or under the control of public authorities) (see PARA 896): see art 4(1).

3 As to the meaning of 'vessel' see PARA 893 note 3.

4 As to the meaning of 'salvage operation' see PARA 893.

5 International Convention on Salvage 1989 art 4(1). See note 1. As to salvage claims by and against the Crown see PARA 890. State immunity is governed by the State Immunity Act 1978: see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 242 et seq.

6 As to the making of Orders in Council declaring which states are parties to the Salvage Convention see PARA 892 note 3. As to the meaning of references in the Salvage Convention to a state party as respects any period before the entry into force of the Salvage Convention see PARA 891 note 3.

7 I.e. its warships or other vessels described in the International Convention on Salvage 1989 art 4(1) (see the text and notes 1-5): see art 4(2).

8 For these purposes, 'Secretary General' means the Secretary General of the Organisation (International Convention on Salvage 1989 art 1(f)); and 'Organisation' means the International Maritime Organisation (art 1(g)). As to the International Maritime Organisation see PARA 13.

9 International Convention on Salvage 1989 art 4(2). See note 1.

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896. Salvage operations by or under the control of public authorities.

The International Convention on Salvage 1989¹ does not affect any provisions of national law or any international Convention relating to salvage operations² by or under the control of public authorities³. Nevertheless, salvors⁴ carrying out such salvage operations are entitled to avail themselves of the rights and remedies provided for in the Salvage Convention in respect of salvage operations⁵.

The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in the Salvage Convention is to be determined by the law of the state where such authority is situated⁶.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 As to the meaning of 'salvage operation' see PARA 893.

3 International Convention on Salvage 1989 art 5(1). See note 1.

4 As to references to 'salvors' see PARA 893 note 2.

5 International Convention on Salvage 1989 art 5(2). See note 1.

6 International Convention on Salvage 1989 art 5(3). See note 1.

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897. Salvage contracts.

The International Convention on Salvage 1989¹ applies to any salvage operations² save to the extent that a contract otherwise provides expressly or by implication³.

The master⁴ has the authority to conclude contracts for salvage operations on behalf of the owner of the vessel⁵; and the master or the owner of the vessel has the authority to conclude such contracts on behalf of the owner of the property⁶ on board the vessel⁷.

Nothing in these provisions relating to salvage contracts affects the application of the other Convention provisions relating to the annulment and modification of contracts⁸ nor duties to prevent or minimise damage to the environment⁹.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 As to the meaning of 'salvage operation' see PARA 893. As to salvage controlled by public authorities see PARA 896.

3 International Convention on Salvage 1989 art 6(1). See note 1.

4 As to the meaning of 'master' see PARA 424.

5 International Convention on Salvage 1989 art 6(2). See note 1. As to the meaning of 'vessel' see PARA 893 note 3. As to the master's authority to sign a reasonable salvage contract see *The Unique Mariner* [1978] 1 Lloyd's Rep 438.

Any restriction on the application of the International Convention on Salvage 1989 art 6(2) concerning agents would import a practical difficulty and an area of uncertainty into a beneficial provision of an international convention, designed to encourage certainty and remove or reduce delay and haggling, and could leave salvors potentially exposed to the vagaries of ship owners' corporate structures: *Ministry of Trade of the Republic of Iraq v Tsavliris Salvage (International) Ltd, The Altair* [2008] EWHC 612 (Comm), [2008] 2 Lloyd's Rep 90, [2008] All ER (D) 14 (Apr).

6 As to the meaning of 'property' see PARA 893 note 4.

7 International Convention on Salvage 1989 art 6(2), reversing the effect of *Industrie Chimiche Italia Centrale and Cerealfin SA v Alexander G Tsavliris & Sons Maritime Co, Panchristo Shipping Co SA and Bula Shipping Corpn, The Choko Star* [1990] 1 Lloyd's Rep 516, CA. See note 1.

8 The International Convention on Salvage 1989 art 7 (see PARA 898): see art 6(3).

9 International Convention on Salvage 1989 art 6(3). For these purposes, 'damage to the environment' means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents: art 1(d). See note 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/A. IN GENERAL/898. Annulment and modification of contracts.

898. Annulment and modification of contracts.

Under the International Convention on Salvage 1989¹, a contract or any terms thereof may be annulled or modified if²:

- 1029 (1) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable³; or
- 1030 (2) the payment⁴ under the contract is in an excessive degree too large or too small for the services actually rendered⁵.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 International Convention on Salvage 1989 art 7. See note 1. Nothing in art 6 (see PARA 897) affects the application of art 7: see art 6(3); and PARA 897. See also *The Unique Mariner* [1978] 1 Lloyd's Rep 438.

3 International Convention on Salvage 1989 art 7(a). See notes 1, 2.

4 For these purposes, 'payment' means any reward, remuneration or compensation due under the International Convention on Salvage 1989: art 1(e).

5 International Convention on Salvage 1989 art 7(b). See notes 1, 2.

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B. PERFORMANCE OF SALVAGE OPERATIONS

899. Duties of the salvor and of the owner and master.

Under the International Convention on Salvage 1989¹, the salvor² owes a duty to the owner of the vessel³ or other property⁴ in danger⁵:

- 1031 (1) to carry out the salvage operations⁶ with due care⁷;
- 1032 (2) in performing the duty specified in head (1) above, to exercise due care to prevent or minimise damage to the environment⁸;
- 1033 (3) whenever circumstances reasonably require, to seek assistance from other salvors⁹; and
- 1034 (4) to accept the intervention of other salvors when reasonably requested to do so by the owner or master¹⁰ of the vessel or other property in danger, provided that the amount of his reward is not prejudiced should it be found that such a request was unreasonable¹¹.

The owner and master of the vessel or the owner of other property in danger owe a duty to the salvor¹²:

- 1035 (a) to co-operate fully with him during the course of the salvage operations¹³;
- 1036 (b) in so doing, to exercise due care to prevent or minimise damage to the environment¹⁴; and
- 1037 (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so¹⁵.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 As to references to the 'salvor' see PARA 893 note 2.

3 As to the meaning of 'vessel' see PARA 893 note 3.

4 As to the meaning of 'property' see PARA 893 note 4.

5 International Convention on Salvage 1989 art 8(1). See note 1. Article 8 follows the common law principles established in *Tojo Maru (Owners) v Bureau Wijsmuller NV, The Tojo Maru* [1972] AC 242, [1971] 1 All ER 1110, [1971] 1 Lloyd's Rep 341, HL (cited in PARA 953).

6 As to the meaning of 'salvage operation' see PARA 893.

7 International Convention on Salvage 1989 art 8(1)(a). See notes 1, 5.

8 International Convention on Salvage 1989 art 8(1)(b). See notes 1, 5. As to the meaning of 'damage to the environment' see PARA 897 note 9.

- 9 International Convention on Salvage 1989 art 8(1)(c). See notes 1, 5.
- 10 As to the meaning of 'master' see PARA 424.
- 11 International Convention on Salvage 1989 art 8(1)(d). See notes 1, 5.
- 12 International Convention on Salvage 1989 art 8(2). See notes 1, 5.
- 13 International Convention on Salvage 1989 art 8(2)(a). See notes 1, 5.
- 14 International Convention on Salvage 1989 art 8(2)(b). See notes 1, 5.
- 15 International Convention on Salvage 1989 art 8(2)(c). See notes 1, 5.

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900. Rights of coastal states to protect coastline etc from pollution.

Nothing in the International Convention on Salvage 1989¹ affects the right of the coastal state concerned to take measures in accordance with generally recognised principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal state to give directions in relation to salvage operations².

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 International Convention on Salvage 1989 art 9. See note 1. As to the meaning of 'salvage operation' see PARA 893.

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901. Duty to render assistance under the International Convention on Salvage 1989.

Under the International Convention on Salvage 1989¹, every master² is bound, so far as he can do so without serious danger to his vessel³ and persons thereon, to render assistance to any person in danger of being lost at sea⁴; and the states parties⁵ must adopt the measures necessary to enforce that duty⁶.

The owner of the vessel incurs no liability for any breach of the duty of the master so imposed⁷.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526); see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 As to the meaning of 'master' see PARA 424.

3 As to the meaning of 'vessel' see PARA 893 note 3.

4 International Convention on Salvage 1989 art 10(1). See note 1. As to assistance to persons in danger at sea see further PARA 921. Article 10 corresponds to the Maritime Conventions Act 1911 s 6 (repealed). As to the effect of the duty to assist see *The Beaverford (Owners) v The Kafiristan (Owners)* [1938] AC 136, sub nom *The Kafiristan* [1937] 3 All ER 747, 58 Ll L Rep 317, HL (cited in PARA 933).

5 As to the making of Orders in Council declaring which states are parties to the Salvage Convention see PARA 892 note 3. As to the meaning of references in the Salvage Convention to a state party as respects any period before the entry into force of the Salvage Convention see PARA 891 note 3.

6 International Convention on Salvage 1989 art 10(2). See note 1.

7 International Convention on Salvage 1989 art 10(3). The text refers to the duty of the master under art 10(1) (see the text and notes 1-4); see art 10(3) See note 1.

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902. Co-operation between salvors, other interested parties and public authorities.

Under the International Convention on Salvage 1989¹, a state party² must, whenever regulating or deciding upon matters relating to salvage operations³ such as admittance to ports of vessels⁴ in distress or the provision of facilities to salvors⁵, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property⁶ in danger as well as preventing damage to the environment⁷ in general⁸.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526); see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 As to the making of Orders in Council declaring which states are parties to the Salvage Convention see PARA 892 note 3. As to the meaning of references in the Salvage Convention to a state party as respects any period before the entry into force of the Salvage Convention see PARA 891 note 1.

3 As to the meaning of 'salvage operation' see PARA 893.

4 As to the meaning of 'vessel' see PARA 893 note 3.

5 As to references to 'salvors' see PARA 893 note 2.

6 As to the meaning of 'property' see PARA 893 note 4.

7 As to the meaning of 'damage to the environment' see PARA 897 note 9.

8 International Convention on Salvage 1989 art 11. See note 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/C. RIGHTS OF SALVORS/903. Conditions for reward under the International Convention on Salvage 1989.

C. RIGHTS OF SALVORS

903. Conditions for reward under the International Convention on Salvage 1989.

Under the International Convention on Salvage 1989¹, salvage operations² which have had a useful result give right to a reward³. However, except as otherwise provided⁴, no payment⁵ is due under the Salvage Convention if the salvage operations have had no useful result⁶.

The Salvage Convention provisions relating to the rights of salvors⁷ apply, notwithstanding that the salvaged vessel⁸ and the vessel undertaking the salvage operations belong to the same owner⁹.

1 I.e. the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 As to the meaning of 'salvage operation' see PARA 893.

3 International Convention on Salvage 1989 art 12(1). Thus, the principle known in English law as the 'requirement of success' is preserved: see PARAS 941, 942. Cf art 13(1)(c) where the expression 'success' rather than 'useful result' is used: see PARA 904. See note 1.

4 See eg where the Lloyd's Standard Form of Salvage Agreement (also known as 'Lloyd's Open Form' (LOF)) and/or the 'SCOPIC' clause apply (cited in PARA 983 et seq).

5 As to the meaning of 'payment' see PARA 898 note 4.

6 International Convention on Salvage 1989 art 12(2). See note 1. Quaere whether the common law principle of 'engaged services' (see eg *The Undaunted* (1860) Lush 90; and PARA 942) is still good law; and see note 3. See also the principle of 'No Cure, No Pay' used in the Lloyd's Standard Form of Salvage Agreement ('Lloyd's Open Form'); and PARA 983 et seq.

7 I.e. the International Convention on Salvage 1989 Ch III (arts 12-19) (see PARA 904 et seq): see art 12(3). As to references to 'salvors' see PARA 893 note 2.

8 As to the meaning of 'vessel' see PARA 893 note 3.

9 International Convention on Salvage 1989 art 12(3). See note 1. Article 12(3), which permits a claim for salvage even where the service is provided by a sister ship, constitutes a change from English common law: cf *The Caroline* (1861) Lush 334; *The Goring* [1988] AC 831, [1988] 1 All ER 641, [1988] 1 Lloyd's Rep 397, HL; and see PARA 931.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/C. RIGHTS OF SALVORS/904. Criteria for fixing the reward.

904. Criteria for fixing the reward.

The reward under the International Convention on Salvage 1989¹ must be fixed with a view to encouraging salvage operations², taking into account the following criteria without regard to the order in which they are presented below³:

- 1038 (1) the salved value of the vessel⁴ and other property⁵;
- 1039 (2) the skill and efforts of the salvors⁶ in preventing or minimising damage to the environment⁷;
- 1040 (3) the measure of success⁸ obtained by the salvor⁹;
- 1041 (4) the nature and degree of the danger¹⁰;
- 1042 (5) the skill and efforts of the salvors in salvaging the vessel, other property and life¹¹;
- 1043 (6) the time used and expenses and losses incurred by the salvors¹²;
- 1044 (7) the risk of liability and other risks run by the salvors or their equipment¹³;
- 1045 (8) the promptness of the services rendered¹⁴;
- 1046 (9) the availability and use of vessels or other equipment intended for salvage operations¹⁵;
- 1047 (10) the state of readiness and efficiency of the salvor's equipment and the value thereof¹⁶.

Payment of a reward fixed according to these provisions¹⁷ must be made by all of the vessel and other property interests in proportion to their respective salved values¹⁸. A state party¹⁹ may, however, in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares²⁰. Nothing in these provisions²¹ prevents any right of defence²².

The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, must not exceed the salved value of the vessel and other property²³.

1 The Convention on the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 As to the meaning of 'salvage operation' see PARA 893. As to the principle of encouraging salvage operations see eg *The Rilland* [1979] 1 Lloyd's Rep 455 at 458 (cited in PARAS 946-947).

3 International Convention on Salvage 1989 art 13(1). See note 1. As to the reward see further PARA 922. The criteria in art 13 must form the basis for any decision of the receiver of wrecks under the Merchant Shipping Act 1995 s 228(4) (see PARA 887) and for any decision of the court under s 229 (see PARA 888).

4 As to the meaning of 'vessel' see PARA 893 note 3.

5 International Convention on Salvage 1989 art 13(1)(a). See note 1. As to the meaning of 'property' see PARA 893 note 4.

6 As to references to 'salvors' see PARA 893 note 2.

7 International Convention on Salvage 1989 art 13(1)(b). See note 1. As to the meaning of 'damage to the environment' see PARA 897 note 9. See also *United Salvage Pty Ltd v Louis Dreyfus Armateurs SNC* (2007) 240 ALR 630 (damage to be considered must be substantial and not possible, remote or hypothetical).

8 Cf the International Convention on Salvage 1989 art 12, where the expression 'useful result' rather than 'success' is used: see PARA 903. Thus, the existing case law on the measure of success continues to be good law: see PARAS 941, 942.

9 International Convention on Salvage 1989 art 13(1)(c). See note 1.

10 International Convention on Salvage 1989 art 13(1)(d). See note 1. See also *United Salvage Pty Ltd v Louis Dreyfus Armateurs SNC* (2007) 240 ALR 630 (danger to human life and the risk of loss, injury or damage must be assessed in relation to the salvaged property).

11 International Convention on Salvage 1989 art 13(1)(e). See note 1.

12 International Convention on Salvage 1989 art 13(1)(f). See note 1.

13 International Convention on Salvage 1989 art 13(1)(g). See note 1.

14 International Convention on Salvage 1989 art 13(1)(h). See note 1.

15 International Convention on Salvage 1989 art 13(1)(i). See note 1.

16 International Convention on Salvage 1989 art 13(1)(j). See note 1.

17 Is fixed according to the International Convention on Salvage 1989 art 13(1) (see the text and notes 1-16): see art 13(2). See note 1.

18 International Convention on Salvage 1989 art 13(2). See note 1. As to personal liability to pay salvage remuneration see also PARA 116.

19 As to the making of Orders in Council declaring which states are parties to the Salvage Convention see PARA 892 note 3. As to the meaning of references in the Salvage Convention to a state party as respects any period before the entry into force of the Salvage Convention see PARA 891 note 1.

20 International Convention on Salvage 1989 art 13(2). See note 1.

21 Is the International Convention on Salvage 1989 art 13: see art 13(2). See note 1.

22 International Convention on Salvage 1989 art 13(2). See note 1.

23 International Convention on Salvage 1989 art 13(3). See note 1.

UPDATE

904 Criteria for fixing the reward

TEXT AND NOTES 2, 4--As to the encouragement principle and the application of the moderating principle in a case involving high value cargo see *Owners of the Vessel 'Ocean Crown' v Five Oceans Salvage Consultants Ltd* [2009] EWHC 3040 (Admlty), [2010] 1 Lloyd's Rep 468, [2009] All ER (D) 296 (Nov).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/C. RIGHTS OF SALVORS/905. Special compensation.

905. Special compensation.

If the salvor¹, under the International Convention on Salvage 1989², has carried out salvage operations³ in respect of a vessel⁴ which by itself or its cargo threatened damage to the environment⁵ and has failed to earn a reward⁶ at least equivalent to the special compensation assessable in accordance with the following provisions, he is entitled to special compensation from the owner of that vessel equivalent to his expenses⁷.

If, in such circumstances, the salvor by his salvage operations has prevented or minimised damage to the environment, the special compensation so payable by the owner to the salvor may be increased up to a maximum of 30% of the expenses incurred by the salvor⁸. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria for fixing the reward⁹, may increase such special compensation further, but in no event must the total increase be more than 100% of the expenses incurred by the salvor¹⁰.

The total special compensation assessed under these provisions¹¹ must be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor¹² under the usual criteria¹³.

If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any special compensation so due¹⁴.

Nothing in the special compensation provisions¹⁵ affects any right of recourse on the part of the owner of the vessel¹⁶.

1 As to references to the 'salvor' see PARA 893 note 2.

2 I.e. under the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

3 As to the meaning of 'salvage operation' see PARA 893.

4 As to the meaning of 'vessel' see PARA 893 note 3.

5 As to the meaning of 'damage to the environment' see PARA 897 note 9.

6 I.e. under the International Convention on Salvage 1989 art 13 (see PARA 904): see art 14(1). See note 2.

7 International Convention on Salvage 1989 art 14(1). For these purposes, 'salvor's expenses' means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in art 13(1)(h)-(j) (see PARA 904): art 14(3). See note 2. As to special compensation see further PARA 922.

For the purposes of art 14(3), 'expenses . . . incurred' by a salvor denotes amounts either disbursed or borne, not earned as profits. Accordingly, an award of special compensation under art 14(2) is intended to recompense or reimburse a salvor for his expenses in the event that his direct and standby costs exceed his salvage reward under art 13 (see PARA 904) and is not intended to yield or be a source of profit. It follows that salvors entitled to special compensation for protecting the environment are entitled to a fair rate of expense which is comprehensive of indirect or overhead expenses, including the additional cost of having resources on standby

and instantly available but not including a profit element: *Semco Salvage and Marine Pte Ltd v Lancer Navigation Co Ltd, The Nagasaki Spirit* [1997] AC 455, [1997] 1 All ER 502, [1997] 1 Lloyd's Rep 323, HL. *Semco Salvage and Marine Pte Ltd v Lancer Navigation Co Ltd, The Nagasaki Spirit* was a case on the Lloyd's Open Form Salvage Agreement in its 1990 revision (LOF 1990), which gave effect to the International Convention on Salvage 1989 before the Convention came into force internationally (as to which see PARA 878 et seq). As to LOF 1990 see further PARA 983 et seq.

8 International Convention on Salvage 1989 art 14(2). See note 2.

9 Ie the relevant criteria set out in the International Convention on Salvage 1989 art 13(1) (see PARA 904): see art 14(2). See note 2.

10 International Convention on Salvage 1989 art 14(2). See note 2.

11 Ie under the International Convention on Salvage 1989 art 14: see art 14(4). See note 2.

12 Ie under the International Convention on Salvage 1989 art 13 (see PARA 904): see art 14(4). See note 2.

13 International Convention on Salvage 1989 art 14(4). See note 2.

14 International Convention on Salvage 1989 art 14(5). The text refers to special compensation due under art 14: see art 14(5). See note 2.

15 Ie nothing in the International Convention on Salvage 1989 art 14: see art 14(6). See note 2.

16 International Convention on Salvage 1989 art 14(6). See note 2.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/C. RIGHTS OF SALVORS/906. Apportionment between salvors.

906. Apportionment between salvors.

Under the International Convention on Salvage 1989¹, the apportionment of a reward² between salvors³ must be made on the basis of the usual criteria⁴ for fixing the reward⁵.

The apportionment between the owner, master⁶ and other persons in the service of each salving vessel⁷ must be determined by the law of the flag of that vessel⁸. If the salvage has not been carried out from a vessel, the apportionment must be determined by the law governing the contract between the salvor and his servants⁹.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526); see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 The under the International Convention on Salvage 1989 art 13 (see PARA 904): see art 15(1). See note 1.

3 As to references to 'salvors' see PARA 893 note 2.

4 The criteria contained in the International Convention on Salvage 1989 art 13 (see PARA 904): see art 15(1). See note 1.

5 International Convention on Salvage 1989 art 15(1). See note 1. Article 15 corresponds to the Maritime Conventions Act 1911 s 7 (repealed).

6 As to the meaning of 'master' see PARA 424.

7 As to the meaning of 'vessel' see PARA 893 note 3.

8 International Convention on Salvage 1989 art 15(2). See note 1.

9 International Convention on Salvage 1989 art 15(2). See note 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/C. RIGHTS OF SALVORS/907. Salvage of persons.

907. Salvage of persons.

Under the International Convention on Salvage 1989¹, a salvor² of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment³ awarded to the salvor for salvaging the vessel⁴ or other property⁵ or preventing or minimising damage to the environment⁶.

No remuneration is due from persons whose lives are saved, but nothing in these provisions⁷ affects the provisions of national law on this subject⁸.

1 Ie the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 As to references to 'salvor' see PARA 893 note 2.

3 As to the meaning of 'payment' see PARA 898 note 4.

4 As to the meaning of 'vessel' see PARA 893 note 3.

5 As to the meaning of 'property' see PARA 893 note 4.

6 International Convention on Salvage 1989 art 16(2). See note 1. As to the meaning of 'damage to the environment' see PARA 897 note 9. It is apprehended that there can now be no claim for life salvage unless some property is also saved. Cf the Merchant Shipping Act 1894 s 544 (repealed); and see PARA 927.

7 Ie nothing in the International Convention on Salvage 1989 art 16: see art 16(1).

8 International Convention on Salvage 1989 art 16(1). As to recourse for life salvage payments see further PARA 923. Article 16(1) must be read in the light of the duty under art 10: see PARA 901. There are no principles of English common law which conflict with art 16(1). See note 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/C. RIGHTS OF SALVORS/908. Services rendered under existing contracts.

908. Services rendered under existing contracts.

Under the International Convention on Salvage 1989¹, no payment is due unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose².

¹ The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

² International Convention on Salvage 1989 art 17. See note 1. Article 17 restates the general principles of English common law that a salvor must be a volunteer to claim a reward: see PARA 932 et seq.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/C. RIGHTS OF SALVORS/909. Effect of salvor's misconduct.

909. Effect of salvor's misconduct.

Under the International Convention on Salvage 1989¹, a salvor² may be deprived of the whole or part of the payment³ due, to the extent that the salvage operations⁴ have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct⁵.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 As to references to 'salvor' see PARA 893 note 2.

3 As to the meaning of 'payment' see PARA 898 note 4.

4 As to the meaning of 'salvage operation' see PARA 893.

5 International Convention on Salvage 1989 art 18. See note 1. As to the general duties of the salvor see PARA 899. See also *Tojo Maru (Owners) v Bureau Wijsmuller NV, The Tojo Maru* [1972] AC 242, [1971] 1 All ER 1110, [1971] 1 Lloyd's Rep 341, HL (salvors' liability to counterclaim).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/C. RIGHTS OF SALVORS/910. Prohibition of salvage operations.

910. Prohibition of salvage operations.

Under the International Convention on Salvage 1989¹, services rendered notwithstanding the express and reasonable prohibition of the owner or master² of the vessel³ or the owner of any other property⁴ in danger which is not and has not been on board the vessel do not give rise to payment under the Convention⁵.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 As to the meaning of 'master' see PARA 424.

3 As to the meaning of 'vessel' see PARA 893 note 3.

4 As to the meaning of 'property' see PARA 893 note 4.

5 International Convention on Salvage 1989 art 19. See note 1.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/D. CLAIMS AND ACTIONS/911. Maritime lien.

D. CLAIMS AND ACTIONS

911. Maritime lien.

Nothing in the International Convention on Salvage 1989¹ affects the salvor's maritime lien² under any international Convention or national law³.

The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided⁴.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 As to maritime liens see PARA 1014 et seq.

3 International Convention on Salvage 1989 art 20(1).

4 International Convention on Salvage 1989 art 20(2).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/D. CLAIMS AND ACTIONS/912. Duty to provide security.

912. Duty to provide security.

Upon the request of the salvor, a person liable for a payment¹ due under the International Convention on Salvage 1989² must provide satisfactory security for the claim, including interest and costs of the salvor³.

The owner of the salvaged vessel⁴ must⁵ use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released⁶.

The salvaged vessel and other property⁷ must not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations⁸ until satisfactory security has been put up for the salvor's claim against the relevant vessel or property⁹.

1 As to the meaning of 'payment' see PARA 898 note 4.

2 I.e. under the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

3 International Convention on Salvage 1989 art 21(1).

4 As to the meaning of 'vessel' see PARA 893 note 3.

5 I.e. without prejudice to the International Convention on Salvage 1989 art 21(1) (see the text and notes 1-3): see art 21(2).

6 International Convention on Salvage 1989 art 21(2).

7 As to the meaning of 'property' see PARA 893 note 4.

8 As to the meaning of 'salvage operation' see PARA 893.

9 International Convention on Salvage 1989 art 21(3).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/D. CLAIMS AND ACTIONS/913. Interim payment.

913. Interim payment.

The tribunal having jurisdiction over the claim of the salvor under the International Convention on Salvage 1989¹ may, by interim decision, order that the salvor is to be paid on account such amount as seems fair and just, and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case².

In the event of such an interim payment, the security provided³ is to be reduced accordingly⁴.

1 I.e. under the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 International Convention on Salvage 1989 art 22(1).

3 I.e. under the International Convention on Salvage 1989 art 21 (see PARA 912): see art 22(2).

4 International Convention on Salvage 1989 art 22(2).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/D. CLAIMS AND ACTIONS/914. Limitation of actions.

914. Limitation of actions.

Any action relating to payment under the International Convention on Salvage 1989¹ is time-barred if judicial proceedings² or arbitral proceedings have not been instituted within a period of two years³. The limitation period commences on the day on which the salvage operations⁴ are terminated⁵.

The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant⁶. This period may in the like manner be further extended⁷.

An action for indemnity by a person liable may be instituted even after the expiration of the limitation period so provided for⁸, if brought within the time allowed by the law of the state where proceedings are instituted⁹.

1 le under the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 As to the meaning of 'judicial proceedings' see PARA 892 note 2.

3 International Convention on Salvage 1989 art 23(1). Cf the Maritime Conventions Act 1911 s 8 proviso (repealed) (former power of the court to extend the two-year period for commencing proceedings).

4 As to the meaning of 'salvage operation' see PARA 893.

5 International Convention on Salvage 1989 art 23(1).

6 International Convention on Salvage 1989 art 23(2). Cf the Maritime Conventions Act 1911 s 8 proviso (repealed). It is apprehended that such a declaration may be either oral or in writing.

7 International Convention on Salvage 1989 art 23(2).

8 le provided for in the International Convention on Salvage 1989 art 23(1), (2) (see the text and notes 1-7): see art 23(3).

9 International Convention on Salvage 1989 art 23(3). The test as to when proceedings have been commenced is determined according to the lex fori: see *Dresser UK Ltd v Falcongate Freight Management Ltd* [1992] QB 502, [1992] 2 All ER 450, CA; and PARA 99. As to the lex fori see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 11.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/D. CLAIMS AND ACTIONS/915. Interest.

915. Interest.

The right of the salvor to interest on any payment due under the International Convention on Salvage 1989¹ must be determined according to the law of the State in which the tribunal seized of the case is situated².

¹ See under the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

² International Convention on Salvage 1989 art 24. As to the court's power to award interest under English common law see PARA 946.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/D. CLAIMS AND ACTIONS/916. State-owned cargoes.

916. State-owned cargoes.

Unless the state owner consents, no provision of the International Convention on Salvage 1989¹ may be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings in rem against, non-commercial cargoes owned by a state and entitled, at the time of the salvage operations², to sovereign immunity under generally recognised principles of international law³.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 As to the meaning of 'salvage operation' see PARA 893.

3 International Convention on Salvage 1989 art 25. State immunity is governed by the State Immunity Act 1978: see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 242 et seq.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/D. CLAIMS AND ACTIONS/917. Humanitarian cargoes.

917. Humanitarian cargoes.

No provision of the International Convention on Salvage 1989¹ may be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a state, if such state has agreed to pay for salvage services rendered in respect of such humanitarian cargoes².

¹ I.e. the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

² International Convention on Salvage 1989 art 26.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/D. CLAIMS AND ACTIONS/918. Publication of arbitral awards.

918. Publication of arbitral awards.

Under the International Convention on Salvage 1989¹, states parties² must encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases³.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 As to the making of Orders in Council declaring which states are parties to the Salvage Convention see PARA 892 note 3. As to the meaning of references in the Salvage Convention to a state party as respects any period before the entry into force of the Salvage Convention see PARA 891 note 3.

3 International Convention on Salvage 1989 art 27.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(iv) The Salvage Convention 1989/E. RESERVATIONS/919. In general.

E. RESERVATIONS

919. In general.

Any state may, at the time of signature, ratification, acceptance, approval or accession, reserve the right not to apply the provisions of the International Convention on Salvage 1989¹, in circumstances when²:

- 1048 (1) the salvage operation³ takes place in inland waters and all vessels⁴ involved are of inland navigation⁵;
- 1049 (2) the salvage operations take place in inland waters and no vessel is involved⁶;
- 1050 (3) all interested parties are nationals of that state⁷;
- 1051 (4) the property⁸ involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea bed⁹.

Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval¹⁰.

Any state which has made a reservation to the Salvage Convention may withdraw it at any time by means of a notification addressed to the Secretary General of the International Maritime Organisation¹¹. Such withdrawal takes effect on the date the notification is received¹². If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary General, the withdrawal takes effect on such later date¹³.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3).

The Salvage Convention applies save to the extent that a contract otherwise provides expressly or by implication: see art 6; and PARA 897. As to salvage controlled by public authorities see PARA 896; and as to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 International Convention on Salvage 1989 art 30(1). As to reservations so made by the United Kingdom see PARA 920. Article 30 is not set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (as to which see note 1).

3 As to the meaning of 'salvage operation' see PARA 893.

4 As to the meaning of 'vessel' see PARA 893 note 3.

5 International Convention on Salvage 1989 art 30(1)(a).

6 International Convention on Salvage 1989 art 30(1)(b).

7 International Convention on Salvage 1989 art 30(1)(c).

8 As to the meaning of 'property' see PARA 893 note 4.

9 International Convention on Salvage 1989 art 30(1)(d).

- 10 International Convention on Salvage 1989 art 30(2).
- 11 International Convention on Salvage 1989 art 30(3). As to the International Maritime Organisation see
PARA 13.
- 12 International Convention on Salvage 1989 art 30(3).
- 13 International Convention on Salvage 1989 art 30(3).

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F. PROVISIONS HAVING EFFECT IN CONNECTION WITH THE CONVENTION

920. Claims excluded from the Convention.

The provisions of the Convention¹ do not apply²:

- 1052 (1) to a salvage operation³ which takes place in inland waters⁴ of the United Kingdom⁵ and in which all the vessels⁶ involved are of inland navigation⁷; and
- 1053 (2) to a salvage operation which takes place in inland waters of the United Kingdom and in which no vessel is involved⁸.

1 The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3). However, for the purposes of s 224(2), Sch 11 Pt II (paras 1-7) (provisions having effect in connection with the Convention) (see also PARA 921 et seq) the Convention as set out in the Merchant Shipping Act 1995 Sch 11 Pt I is referred to simply as 'the Convention'; and any reference to a numbered article is a reference to the article of the Convention which is so numbered: see the Merchant Shipping Act 1995 Sch 11 Pt II para 1.

2 Merchant Shipping Act 1995 Sch 11 Pt II para 2(1). As to reservations see PARA 919.

3 As to the meaning of 'salvage operation' under the Convention see PARA 893.

4 For these purposes, 'inland waters' does not include any waters within the ebb and flow of the tide at ordinary spring tides or the waters of any dock which is directly or (by means of one or more other docks) indirectly, connected with such waters: Merchant Shipping Act 1995 Sch 11 Pt II para 2(2).

5 As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 As to the meaning of 'vessel' under the Convention see PARA 893 note 3.

7 Merchant Shipping Act 1995 Sch 11 Pt II para 2(1)(a).

8 Merchant Shipping Act 1995 Sch 11 Pt II para 2(1)(b).

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921. Assistance to persons in danger at sea.

The master¹ of a vessel² who fails to comply with the duty imposed on him under the International Convention on Salvage 1989³ to render assistance to any person in danger of being lost at sea⁴ commits an offence⁵.

Compliance by the master of a vessel with that duty does not affect his right or the right of any other person to a payment⁶ under the Convention or under any contract⁷.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'vessel' under the Convention see PARA 893 note 3.

3 I.e. the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3). However, for the purposes of s 224(2), Sch 11 Pt II (paras 1-7) (provisions having effect in connection with the Convention) (see also PARAS 920, 922-923) the Convention as set out in the Merchant Shipping Act 1995 Sch 11 Pt I is referred to simply as 'the Convention'; and any reference to a numbered article is a reference to the article of the Convention which is so numbered: see the Merchant Shipping Act 1995 Sch 11 Pt II para 1.

4 I.e. the duty imposed on him by the International Convention on Salvage 1989 art 10(1) (see PARA 901): see the Merchant Shipping Act 1995 Sch 11 Pt II para 3(1).

5 See the Merchant Shipping Act 1995 Sch 11 Pt II para 3(1); and PARA 1197.

6 As to the meaning of 'payment' under the Convention see PARA 898 note 4.

7 Merchant Shipping Act 1995 Sch 11 Pt II para 3(2).

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922. The reward and special compensation; the common understanding.

In fixing a reward under the International Convention on Salvage 1989¹ and in assessing special compensation under the Convention², the court or arbitrator is under no duty to fix a reward³ up to the maximum salvaged value of the vessel⁴ and other property⁵ before assessing the special compensation to be paid⁶.

¹ *Ie* under the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13 (see PARA 904): see the Merchant Shipping Act 1995 s 224(2), Sch 11 Pt II para 4.

The International Convention on Salvage 1989 is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3). However, for the purposes of s 224(2), Sch 11 Pt II (paras 1-7) (provisions having effect in connection with the Convention) (see also PARAS 920, 921, 923) the Convention as set out in the Merchant Shipping Act 1995 Sch 11 Pt I is referred to simply as 'the Convention'; and any reference to a numbered article is a reference to the article of the Convention which is so numbered: see the Merchant Shipping Act 1995 Sch 11 Pt II para 1.

² *Ie* under the International Convention on Salvage 1989 art 14 (see PARA 905): see the Merchant Shipping Act 1995 Sch 11 Pt II para 4.

³ *Ie* under the International Convention on Salvage 1989 art 13 (see PARA 904): see the Merchant Shipping Act 1995 Sch 11 Pt II para 4.

⁴ As to the meaning of 'vessel' under the Convention see PARA 893 note 3.

⁵ As to the meaning of 'property' under the Convention see PARA 893 note 4.

⁶ Merchant Shipping Act 1995 Sch 11 Pt II para 4. The text refers to assessing the special compensation to be paid under the International Convention on Salvage 1989 art 14 (see PARA 905): see the Merchant Shipping Act 1995 Sch 11 Pt II para 4.

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923. Recourse for life salvage payment.

In circumstances where:

- 1054 (1) services are rendered wholly or in part in United Kingdom waters¹ in saving life from a vessel² of any nationality or elsewhere in saving life from any United Kingdom ship³; and
- 1055 (2) either the vessel and other property⁴ are destroyed or the sum to which the salvor⁵ is entitled under the Convention⁶ is less than a reasonable amount for the services rendered in saving life⁷,

the Secretary of State⁸ may, if he thinks fit, pay to the salvor such sum or, as the case may be, such additional sum as he thinks fit in respect of the services rendered in saving life⁹.

1 As to the meaning of 'United Kingdom waters' see PARA 48 note 10. As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 As to the meaning of 'vessel' under the Convention see PARA 893 note 3. For the purposes of the Merchant Shipping Act 1995 s 224(2), Sch 11 Pt II (paras 1-7) (provisions having effect in connection with the Convention) (see also PARA 920 et seq) the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) as set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3) is referred to simply as 'the Convention'; and any reference to a numbered article is a reference to the article of the Convention which is so numbered: see the Merchant Shipping Act 1995 Sch 11 Pt II para 1.

3 Merchant Shipping Act 1995 Sch 11 Pt II para 5(1)(a). As to the meaning of 'United Kingdom ship' see PARA 230; and as to the meaning of 'ship' see PARA 229.

4 As to the meaning of 'property' under the Convention see PARA 893 note 4.

5 As to the meaning of 'salvor' see PARA 883 note 4.

6 Ie under the International Convention on Salvage 1989 art 16(2) (see PARA 907): see the Merchant Shipping Act 1995 Sch 11 Pt II para 5(1)(b).

7 Merchant Shipping Act 1995 Sch 11 Pt II para 5(1)(b).

8 As to the Secretary of State see PARA 38.

9 Merchant Shipping Act 1995 Sch 11 Pt II para 5(2). As to life salvage see also PARA 120 et seq.

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(v) Common Law Provisions relating to Salvage

A. SALVAGE SERVICES

(A) IN GENERAL

924. How salvage services may be rendered.

Salvage services may be rendered in many different ways. They include¹: towing², piloting³, navigating⁴ or standing by⁵ a vessel in danger; landing⁶ or transshipping⁷ cargo or persons belonging to that vessel; floating a stranded vessel⁸; raising a sunken vessel⁹ or cargo¹⁰; saving a derelict¹¹ or wreck¹²; setting in motion¹³, fetching¹⁴ or bringing¹⁵ assistance to a vessel in danger; giving advice or information in order to save a vessel from a local danger¹⁶; supplying officers or crew¹⁷ or tackle¹⁸ to a vessel in need of them; rescuing persons who have had to take to the boats¹⁹; removing a vessel from a danger such as a vessel or wreck which has fouled her²⁰, an ice floe²¹ or an impending collision²²; putting out a fire on board²³; saving property or life from a vessel on fire²⁴; removing a vessel or cargo from a position in which it is in imminent danger of catching fire²⁵; protecting or rescuing a vessel, her cargo or persons on board from pirates or plunderers²⁶; recovering and restoring a captured ship²⁷ or the recovery of a vessel from capture by revolutionaries²⁸; and dispatching an aircraft to search for and transmit the position of a derelict vessel²⁹.

1 See 2 Pritchard's *Admiralty Digest* (3rd Edn) pp 1920-2123.

2 *The Ellora* (1862) Lush 550; *The Madras* [1898] P 90, 8 Asp MLC 397; *The Kangaroo* [1918] P 327; *Troilus (Cargo Owners) v Glenogle (Owners, Master and Crew)* [1951] AC 820, [1951] 2 All ER 40, [1951] 1 Lloyd's Rep 467, HL; *The Ilo* [1982] 1 Lloyd's Rep 39.

3 *The Anders Knape* (1879) 4 PD 213, 4 Asp MLC 142; *The Tafelberg* (1941) 71 Ll L Rep 189.

4 *Newman v Walters* (1804) 3 Bos & P 612; *The Le Jonet* (1872) LR 3 A & E 556, 1 Asp MLC 438; *The San Demetrio* (1941) 69 Ll L Rep 5.

5 *The Undaunted* (1860) Lush 90 at 92; *The Guernsey Coast* (1950) 83 Ll L Rep 483.

6 *The Favorite* (1844) 2 Wm Rob 255.

7 *The Columbia* (1838) 3 Hag Adm 428; *The Erato* (1888) 13 PD 163, 6 Asp MLC 334.

8 *The Inchmaree* [1899] P 111, 8 Asp MLC 486; *The Cayo Bonito* [1904] P 310, 9 Asp MLC 603; *The Queen Elizabeth* (1949) 82 Ll L Rep 803.

9 *The Catherine* (1848) 6 Notes of Cases, Supp. xliii.

10 *The Cadiz and The Boyne* (1876) 3 Asp MLC 332.

11 *The Janet Court* [1897] P 59, 8 Asp MLC 223. As to the meaning of 'derelict' see PARA 987.

12 *The Samuel* (1851) 15 Jur 407. As to the meaning of 'wreck' see PARA 987.

13 *The Marguerite Molinos* [1903] P 160, 9 Asp MLC 424; *The Cayo Bonito* [1904] P 310, 9 Asp MLC 603 (launchers of a lifeboat).

- 14 *The Sarah* (1878) 3 PD 39, 3 Asp MLC 542.
- 15 *The Undaunted* (1860) Lush 90.
- 16 *The Eliza* (1862) Lush 536; *The Strathnaver* (1875) 1 App Cas 58 at 62, 63, 3 Asp MLC 113 at 115, PC; but see *The Vrouw Margaretha* (1801) 4 Ch Rob 103 at 104 per Lord Stowell; *The Little Joe* (1860) Lush 88 at 89 per Dr Lushington (where it was doubted whether this service was a salvage service); *The Tower Bridge* [1936] P 30, 53 LI L Rep 171; *The American Farmer* (1947) 80 LI L Rep 672.
- 17 *The Skibladner* (1877) 3 PD 24, 3 Asp MLC 556.
- 18 *The Prince of Wales* (1848) 6 Notes of Cases 39.
- 19 *The Cairo* (1874) LR 4 A & E 184, 2 Asp MLC 257; *The Carrie* [1917] P 224, 14 Asp MLC 321.
- 20 *The Vandyck* (1881) 7 PD 42 (affd (1882) 5 Asp MLC 17, CA); cf *The Emilie Galline* [1903] P 106, 9 Asp MLC 401; *The Port Caledonia and the Anna* [1903] P 184, 9 Asp MLC 479; *The Ovre and the Conde de Zubiria* (1920) 2 LI L Rep 21.
- 21 *The Swan* (1839) 1 Wm Rob 68.
- 22 *The Saratoga* (1861) Lush 318.
- 23 *The City of Newcastle* (1894) 7 Asp MLC 546; *The F D Lambert* [1917] P 232n, 14 Asp MLC 278; *The Flore* (1929) 34 LI L Rep 172; *The Belgia* (1941) 71 LI L Rep 21.
- 24 *The Eastern Monarch* (1860) Lush 81; *The Elkhound* (1931) 39 LI L Rep 15.
- 25 *The Tees, The Pentucket* (1862) Lush 505; *The Demosthenes* (1926) 26 LI L Rep 99.
- 26 *The Calypso* (1828) 2 Hag Adm 209; *The Erato* (1888) 13 PD 163, 6 Asp MLC 334.
- 27 *The Henry* (1810) Edw 192.
- 28 *The Lomonosoff* [1921] P 97.
- 29 *The American Farmer* (1947) 80 LI L Rep 672.

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925. The right to salvage reward.

Maritime law¹ differs from common law in that at common law work and labour voluntarily done or money voluntarily expended by one person to preserve or benefit property which he knows to be that of another does not create any lien on the property saved or benefited, or create any obligation to repay the expenditure².

The common law courts would not entertain an action for salvage unless the salvor could prove a contract of employment, express or implied³, under which reward was due and on which, accordingly, the salvor could recover quantum meruit in the absence of an agreement as to the amount of reward⁴. The right of the salvor in maritime law to salvage reward does not depend on contract, but on the obligation which that law imposes on the owner of property saved, or on persons who have had a benefit arising out of the saving of the property, to remunerate the salvor⁵, although the right often does arise out of, or is accompanied by, contract⁶.

A salvage service rendered to property so circumstanced that a prudent owner of the property would accept the service creates of itself a title to salvage reward⁷; and the fact that an express contract for the performance of salvage services has been entered into by the salvor, who has failed to carry it out, does not preclude him from obtaining salvage reward, if the service rendered by him contributed to some extent to the ultimate safety of the property in danger⁸.

To maintain a claim for salvage reward it is not sufficient that services in the nature of salvage services have been rendered. It is necessary to show that the property in danger, or some part of it, has been ultimately saved, whether the result has been achieved with the aid of the salvage service or by other means⁹; for, if no part of the property in danger is ultimately saved, no salvage reward is recoverable unless by special agreement salvage reward is to be paid independently of the ultimate safety of the property in danger¹⁰.

1 As to the nature of maritime law see PARAS 1-3.

2 *Falcke v Scottish Imperial Insurance Co* (1886) 34 ChD 234 at 248, 249, CA; and see **CONTRACT** vol 9(1) (Reissue) PARA 618; **RESTITUTION** vol 40(1) (2007 Reissue) PARA 15.

3 *Lipson v Harrison* (1853) 2 WR 10 (need to establish implied contract). As to contracts of employment generally see **EMPLOYMENT** vol 39 (2009) PARA 1 et seq.

4 *Newman v Walters* (1804) 3 Bos & P 612.

5 *Five Steel Barges* (1890) 15 PD 142 at 146, 6 Asp MLC 580 at 582 per Hannen P; *The Hestia* [1895] P 193, 7 Asp MLC 599; *The Port Victor (Cargo ex)* [1901] P 243 at 247, 249, 9 Asp MLC 163 at 165, 166.

6 As to agreements for salvage see also PARA 943 et seq.

7 *The Vandyck* (1881) 7 PD 42 (affd (1882) 5 Asp MLC 17, CA); *The Liffey* (1887) 6 Asp MLC 255 (services rendered to a vessel which the salvor believed to be his own); *The Auguste Legembre* [1902] P 123, 9 Asp MLC 279 (services declined by master of salvaged vessel); and see *The Emilie Galline* [1903] P 106, 9 Asp MLC 401; *The Port Caledonia and The Anna* [1903] P 184, 9 Asp MLC 479; *The Kangaroo* [1918] P 327 (services accepted under protest while under convoy). As to salvage charges recoverable under a policy of marine insurance see **INSURANCE** vol 25 (2003 Reissue) PARAS 434, 456.

8 *The Hestia* [1895] P 193, 7 Asp MLC 599.

9 *The Sarpedon (Cargo ex)* (1877) 3 PD 28, 3 Asp MLC 509; *The Renpor* (1883) 8 PD 115, 5 Asp MLC 98, CA; *The Elton* [1891] P 265 at 269; *The Port Victor (Cargo ex)* [1901] P 243 at 255-256, 9 Asp MLC 182 at 184, CA. As to the requirement of successful service see PARAS 941-942.

10 See PARA 943.

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926. Property the subject of salvage service.

No property other than maritime property¹ can be the subject of a salvage service. 'Maritime property' consists of a vessel², her equipment, cargo or wreck. 'Cargo' includes all merchandise on board the salvaged vessel³. It does not include, so far as regards the liability to arrest and contribution to salvage reward, the personal effects of the master or crew⁴, or the clothes or personal effects of passengers, whether on the person, or taken on board by them for their daily use⁵, or, it would seem, ship's provisions⁶.

Freight in the course of being earned by the carriage of the cargo, that is to say freight at risk, is the subject of salvage if it is earned in consequence of salvage service⁷.

1 *Gas Float Whitton No 2* [1895] P 301, DC (on appeal [1896] P 42, 8 Asp MLC 110, CA; affd sub nom *Wells v Gas Float Whitton No 2 (Owners)*, *The Gas Float Whitton No 2* [1897] AC 337, 8 Asp MLC 272, HL). See also *The Raft of Timber* (1844) 2 Wm Rob 251; *Palmer v Rouse* (1858) 3 H & N 505.

2 See *Gas Float Whitton No 2* [1895] P 301, DC (on appeal [1896] P 42, 8 Asp MLC 110, CA; affd sub nom *Wells v Gas Float Whitton No 2 (Owners)*, *The Gas Float Whitton No 2* [1897] AC 337, 8 Asp MLC 272, HL); but see also the wide definition of 'vessel' in the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 1(b) (cited in PARA 893 note 3).

3 As to whether 'cargo' should include goods in tow see *Wells v Gas Float Whitton No 2 (Owners)* [1897] AC 337 at 345, 8 Asp MLC 272 at 274, HL.

4 See 1 Beawes's *Lex Mercatoria* (6th Edn) (Chitty) p 242.

5 *The Willem III* (1871) LR 3 A & E 487, 1 Asp MLC 129.

6 Cf *Brown v Stapyleton* (1827) 4 Bing 119.

7 See PARA 978.

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(B) LIFE SALVAGE

927. In general.

Where no property had been saved and life alone had been preserved from destruction, no suit for a salvage reward could be maintained in the Admiralty Court, one reason being that there could be no proceedings in rem, which was the ancient foundation of the salvage suit¹. Where, however, both life and property had been saved it was the practice to give an enhanced award, the enhancement being a reflection of the value of the services rendered in the saving of life².

Statutory provisions were introduced to protect persons who could not be justly compensated because they had saved life only³.

1 *The Fusilier* (1865) Brown & Lush 341 at 344 per Dr Lushington; and see *The Aid* (1822) 1 Hag Adm 83. As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq; and as to claims in rem generally see PARA 92 et seq.

2 See *The Bosworth (No 3)* [1962] 1 Lloyd's Rep 483; *The Bosworth (No 2)* [1960] 1 All ER 729, [1961] 1 WLR 319, [1960] 1 Lloyd's Rep 173, CA; *The Fusilier* (1865) Brown & Lush 341; *The Johannes* (1860) Lush 182; *The Willem III* (1871) LR 3 A & E 487, 1 Asp MLC 129.

3 See the Merchant Shipping Act 1894 ss 544-546 (repealed). In certain circumstances, a salvor might obtain a true life salvage award under s 544 (repealed) where, even though he himself had rendered no salvage services to ships and cargo (*The Bosworth (No 3)* [1962] 1 Lloyd's Rep 483), some property was preserved (*Nourse v Liverpool Sailing Ship Owners Mutual Protection and Indemnity Association* [1896] 2 QB 16, CA; *The Bosworth (No 2)* [1960] 1 All ER 729, [1961] 1 WLR 319, [1960] 1 Lloyd's Rep 173, CA). See also *The Schiller (Cargo ex)* (1877) 2 PD 145, CA (where the property salvaged was recovered by divers long after the life services were rendered).

It is apprehended that the former practice of the Admiralty Court is now good law and that there can be no claim for life salvage unless some property is also saved: see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 16(2); and PARA 907. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

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(C) DANGER TO PROPERTY OR LIFE

928. Danger requisite.

The essence of a salvage service is that it is a service rendered to property or life in danger¹. The requisite degree of danger is a real and appreciable danger. It must not be merely fanciful, but it need not be immediate or absolute². It is sufficient if at the time of the service the situation of the subject of the service is such as to cause reasonable apprehension on the part of the person in charge of it³. The danger may arise from the condition of the salvaged vessel⁴, or of her crew⁵, from her position, or from the master's want of skill or his ignorance of the locality or of local conditions⁶.

A service which begins as salvage is not necessarily transformed into towage⁷ because on the voyage the ship is towed past, or into, ports at which she could be in safety⁸.

1 See generally PARA 112 et seq.

2 *The Charlotte* (1848) 3 Wm Rob 68 at 71 per Dr Lushington (approved in *The Strathnaver* (1875) 1 App Cas 58 at 65, 3 Asp MLC 113 at 116, PC); and see *The Phantom* (1866) LR 1 A & E 58 at 60 per Dr Lushington; *The Calyx* (1910) 27 TLR 166; cf *The Sea Salvage* (1912) Times, 9 December. The dictum in *Akerblom v Price* (1881) 7 QBD 129 at 135, 4 Asp MLC 441 at 444, CA, per Brett LJ, that 'it is essential that the ship should be in imminent danger of being lost' may be explained as referring only to the case before him, a salvage claim by a pilot, to which special considerations apply (see PARA 935). For an extreme case see *The Batavier* (1853) 1 Ecc & Ad 169.

3 See the cases cited in note 2.

4 *The Ella Constance* (1864) 33 LJPM & A 189 at 191 (want of fuel); *The Cythera* [1965] 2 Lloyd's Rep 454 (NSW) (danger of vessel being stolen).

5 *The Aglaia* (1888) 13 PD 160, 6 Asp MLC 337 (crew suffering from frostbite).

6 *The Eugenie* (1844) 3 Notes of Cases 430 at 431; *The Lomonosoff* [1921] P 97; *The Tower Bridge* [1936] P 30, 53 Ll L Rep 171; *The Tres* (1936) 55 Ll L Rep 16.

7 As to towage generally see PARA 587 et seq.

8 *Troilus (Cargo Owners) v Glenogle (Owners, Master and Crew)* [1951] AC 820, [1951] 2 All ER 40, [1951] 1 Lloyd's Rep 467, HL.

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929. Evidence of danger.

The burden of proving the presence of danger rests upon those who claim as salvors¹. The conduct of those on board the salved ship in giving signals of distress or in accepting help may be evidence of the presence of danger². However, the views of experienced personnel on board the salved vessel are relevant only in so far as they shed light on the attitude which would have been adopted by a reasonably prudent and skilful person in charge of the venture; they are not dispositive of the issue of danger which has to be decided objectively³.

Where signals of distress are wrongfully used, compensation is recoverable for any labour undertaken, or risk or loss incurred, by reason of persons accepting and acting on the prescribed signals of distress⁴, and persons who are induced by ambiguous signals to proceed to the assistance of a vessel which is damaged or in danger are entitled to claim as salvors⁵.

1 *The Wilhelmine* (1842) 1 Notes of Cases 376 at 378. See also *The Calyx* (1910) 27 TLR 166.

2 *The Bomarsund* (1860) Lush 77; cf *The Elswick Park* [1904] P 76, 9 Asp MLC 481.

3 *The Hamtun (owners) v The St John (owners)* [1999] 1 Lloyd's Rep 883, [1999] 1 All ER (Comm) 587.

4 As to the prescribed signals of distress and their use see PARA 755.

5 *The Mary* (1843) 1 Wm Rob 448 at 452, 453; *The Racer* (1874) 2 Asp MLC 317; *The Aglaia* (1888) 13 PD 160, 6 Asp MLC 337.

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(D) PERSONAL SERVICE

930. Requirement of personal services.

The general rule is that all those, and only those, who render personal¹ services in the performance of a salvage service are entitled to a salvage reward². To this rule there are, however, certain exceptions.

The rule of personal service does not extend to the associates of the actual salvors or to the owners of the salving vessel. Members of the crew of a vessel³, including a vessel engaged in public service⁴, who remain on board during the performance of salvage services by other members of the crew, taking no part, but willing, if called upon, to take a part in the services, are entitled to a share in the salvage reward⁵. The owner of the salving vessel is also entitled to a salvage award for the use of his vessel⁶.

The charterer may stand in the position of the owner of the salving vessel in this respect; whether he does so or not depends on the terms of the charterparty. If the charterparty amounts to a demise of the vessel⁷, or contains an express provision entitling the charterer to a salvage reward, he is entitled to share as charterer in the reward⁸; otherwise he is not⁹.

1 *The Charlotte* (1848) 3 Wm Rob 68 at 72 per Dr Lushington. Thus, a coastguard officer merely sending off sailors to a vessel in danger (*The Vine* (1825) 2 Hag Adm 1), or a person who merely hires labourers to assist in unloading a stranded vessel (*The Watt* (1843) 2 Wm Rob 70), is not a salvor. See also *HMS Thetis* (1833) 3 Hag Adm 14 at 41, 42, 61.

2 As to salvage reward see PARA 943 et seq.

3 This exception applies only to those who properly constitute the crew (*The Coriolanus* (1890) 15 PD 103, 6 Asp MLC 514 (cattlemen); *The Minneapolis* [1902] P 30, 9 Asp MLC 270 (horsemen)), but it includes the non-navigating members of the crew such as the doctor, stewardesses, bakers and other persons of a like description (see *The Spree* [1893] P 147, 7 Asp MLC 397; *The Dunottar Castle* [1902] WN 70; *The Minneapolis*).

4 The Crown may claim salvage to the same extent as any other salvor: see the Merchant Shipping Act 1995 s 230(2); and PARA 890. See also John Reeder (ed) *Brice on Maritime Law of Salvage* (4th Edn, 2003) pp 70-71. As to salvage services by Her Majesty's ships see **ARMED FORCES** vol 2(2) (Reissue) PARA 170.

5 *The Sarah Jane* (1843) 2 Wm Rob 110. See also *Banda and Kirwee Booty* (1866) LR 1 A & E 109 at 135, 250 (right of all crew to share in naval prize bounty). As to the apportionment of reward see PARAS 887-889, 961 et seq.

6 *The Vine* (1825) 2 Hag Adm 1; *The Norden* (1853) 1 Ecc & Ad 185; *The Two Friends* (1844) 2 Wm Rob 349. Where the salving vessel is herself the principal instrument in effecting the service, as is now generally the case, the owner receives the largest share of the reward: see PARA 962.

7 *Elliott Steam Tug Co Ltd v Admiralty Comrs, Page v Admiralty Comrs* [1921] 1 AC 137, 15 Asp MLC 81, HL; and see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 446, 480.

8 *The Maria Jane* (1850) 14 Jur 857 at 858; *The Collier* (1866) LR 1 A & E 83 at 85.

9 *The Waterloo* (1820) 2 Dods 433; *The Scout* (1872) LR 3 A & E 512, 1 Asp MLC 258.

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931. Disqualifications from claiming salvage.

The owner, charterer and crew of the salving vessel may be disqualified from claiming a salvage reward¹. The owner or the charterer, as the case may be, of the salving vessel is not entitled to claim a salvage reward against the salved vessel if he is also the owner of the salved vessel, or her charterer where the charterparty amounts to a demise²; but he can still claim against the cargo³ on board the salved vessel⁴, unless by the terms of his contract of carriage of the cargo on the salved vessel he is liable for loss or damage to it, and the salvage service rendered was necessary to save it from loss or damage⁵. If, however, only some of part owners of the salving vessel are interested in the salved vessel, the others are entitled to claim a salvage reward⁶. The inability of the owner or charterer of the salving vessel to claim a salvage reward, whether against the ship or against the cargo, in these circumstances, does not affect the right to a salvage reward of the master or the crew of the salving vessel⁷.

If the salvage services were rendered necessary by the faulty navigation of the salving vessel, neither the owner nor the crew can obtain a salvage reward⁸; and in that case no distinction is made between those who were and those who were not responsible for the negligent navigation⁹. Where, however, a vessel has been damaged by collision with a second vessel, caused by the negligence of the second vessel, and is salved by a third vessel, the owner as well as the crew of the salving vessel may be entitled to claim as salvors, even though the owner is also the owner of the vessel at fault for the collision¹⁰.

Where by the custom of a particular trade, or with regard to vessels of a particular port, or by special agreement, the salving and salved vessels are bound to give mutual protection¹¹, no salvage reward is recoverable.

1 As to salvage rewards see PARA 943 et seq.

2 *The Maria Jane* (1850) 14 Jur 857; *The Collier* (1866) LR 1 A & E 83. The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 12(3) now permits a claim for salvage, even where the service is provided by a sister ship: see PARA 903. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

3 As to the meaning of 'cargo' for salvage purposes see PARA 926.

4 *The Miranda* (1872) LR 3 A & E 561, 1 Asp MLC 440; *The Laertes (Cargo ex)* (1887) 12 PD 187, 6 Asp MLC 174; *The August Korff* [1903] P 166, 9 Asp MLC 428.

5 *The Glenfruin* (1885) 10 PD 103, 5 Asp MLC 413.

6 *The Caroline* (1861) Lush 334. See also *The Glenfruin* (1885) 10 PD 103, 5 Asp MLC 413.

7 *The Sappho* (1871) LR 3 PC 690, 1 Asp MLC 65. See also *The Glenfruin* (1885) 10 PD 103, 5 Asp MLC 113. Claims by seamen against a salved vessel which belongs to the owner of their own vessel are, however, not looked upon favourably unless the services rendered by them were of a serious nature: *The Agamemnon* (1883) 5 Asp MLC 92; *The Leon Blum* [1915] P 90 at 103 (affd [1915] P 290, 13 Asp MLC 273, CA).

8 *The Capella (Cargo ex)* (1807) LR 1 A & E 356. See also *The Altair* [1897] P 105, 8 Asp MLC 224; *The Harvest Home* [1904] P 409, 10 Asp MLC 19. Cf *The Beaverford (Owners) v The Kafiristan (Owners)* [1938] AC 136 at 149, [1937] 3 All ER 747 at 754, 755 (revsg sub nom *The Kafiristan* [1937] P 63, [1937] 1 All ER 40, CA) where Lord Wright expressed some doubt of 'the logic or equity' of the decision in *The Capella (Cargo ex)* and stated that, if the rule laid down in that case is at all sound, it is at any rate excluded where the ship which is

the instrument of the salvage is a different ship from that which is the instrument of the negligent collision. See also the text and note 10.

9 *The Duc d'Aumale (No 2)* [1904] P 60, 9 Asp MLC 502. See notes 8, 10.

10 *The Beaverford (Owners) v The Kafiristan (Owners)* [1938] AC 136, sub nom *The Kafiristan* [1937] 3 All ER 747, 58 Ll L Rep 317, HL (approving *The Glengaber* (1872) 1 Asp MLC 401, and distinguishing *The Glenfruin* (1885) 10 PD 103, 5 Asp MLC 413); *Susan V Luckenbach (Owners) v Admiralty Comrs, The Susan V Luckenbach* [1951] P 197, [1951] 1 All ER 753, 84 Ll L Rep 538, CA (colliding and salving vessels under control of different departments of the Crown). See note 8.

11 *The Swan* (1839) 1 Wm Rob 68 at 70. This defence succeeded in *The Zephyr* (1827) 2 Hag Adm 43 (Honduras trade), *The Harriot* (1842) 1 Wm Rob 439 (South Sea whaling trade), and *The Maria Jane* (1850) 14 Jur 857 (African trade). It failed in *The Waterloo* (1820) 2 Dods 433 (vessels of the East India Company), and *The Swan* (northern whaling fisheries). In *The Africa* (1854) 1 Ecc & Ad 299, Dr Lushington doubted whether such a custom could prevail with regard to services rendered by a steamship. Strict proof of the custom or agreement will be required: *The Waterloo* at 436; and see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 677. In the absence of proof of custom or special agreement, there may still be a connection 'between two ships which, though it would not bar a claim for salvage, might affect the quantum': *The Collier* (1866) LR 1 A & E 83 at 86. See also *The Trelawney* (1802) 4 Ch Rob 223 at 227, 228; *Clan Steam Trawling Co Ltd v Aberdeen Steam Trawling and Fishing Co Ltd* 1908 SC 651.

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(E) VOLUNTARY SERVICE

932. Voluntariness.

Subject to certain exceptions¹, the salvor's service must be voluntary as between the salvors and the owners of the salved vessel², but it may be the subject of special agreement³. If it is rendered under a general contractual obligation, in pursuance of official duty or solely in the interest of self-preservation, it is not a salvage service⁴. Thus, no claim as salvors may ordinarily⁵ be made by the owner, master, crew and pilot of the salved vessel, or of a tug towing the salved vessel under a contract of towage, the ship's agent, government officials acting within the scope of their duties, and passengers on board the salved vessel for services rendered by them. Insurers who incur expenses which come within the suing and labouring clause of the policy⁶ and persons who are employed under contract with third persons to do work in saving property may likewise be disqualified from obtaining a salvage reward⁷ for their services⁸.

1 Compliance with the statutory obligations as to rendering assistance (see PARA 927) is expressly declared not to prevent the assistance being voluntary for the purpose of salvage reward: see PARA 933.

2 *The Sarpen* [1916] P 306, 13 Asp MLC 370, CA. It is immaterial that the salvor has been ordered by someone who has control to carry out the salvage operations: *The Kangaroo* [1918] P 327; and see PARA 930.

The International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 17 (as to which see PARA 908) restates the general principles of English common law that a salvor must be a volunteer to claim a reward. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

3 See PARA 925.

4 *The Neptune* (1824) 1 Hag Adm 227 at 236 per Lord Stowell; *The Schiller (Cargo ex)* (1877) 2 PD 145 at 149, 3 Asp MLC 439 at 442, CA, per Brett LJ; *Clan Steam Trawling Co v Aberdeen Steam Trawling and Fishing Co* 1908 SC 651; *The Carrie* [1917] P 224, 14 Asp MLC 321; *The FD Lambert* [1917] P 232n, 14 Asp MLC 278; *The Lomonosoff* [1921] P 97; and see also PARA 933 et seq.

5 As to the circumstances in which these classes of persons will be treated as salvors see PARA 933 et seq.

6 *Crouan v Stanier* [1904] 1 KB 87. As to the suing and labouring clause, and as to the charges covered by it, see **INSURANCE** vol 25 (2003 Reissue) PARA 435 et seq.

7 As to salvage rewards see PARA 943 et seq.

8 *The Solway Prince* [1896] P 120, 8 Asp MLC 128 (where the claimants were persons who had entered into such a contract with the insurers of the vessel); *The Pinna* (1912) Times, 29 November (persons contracting with canal company). Lifeboatmen employed to render services in saving life may be in this position: see PARA 940.

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933. Effect of statutory duty to assist.

The statutory duty of those on board a ship which has been in collision with another ship to stand by the other ship and afford assistance¹ does not prevent the assistance so given from ranking as a voluntary service².

1 Ie the duty under the Merchant Shipping Act 1995 s 92 (see PARA 756).

2 *The Hannibal, The Queen* (1867) LR 2 A & E 53; *Melanie (Owners) v San Onofre (Owners)* [1925] AC 246 at 261, 262, 16 Asp MLC 479 at 483, HL (approved in *The Beaverford (Owners) v The Kafiristan (Owners)* [1938] AC 136, [1937] 3 All ER 747, 58 Ll L Rep 317, HL).

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934. Right of crew of salvaged vessel.

The crew of the salvaged vessel may claim a salvage reward as salvors if, prior to the performance of their services, their contracts of service have been terminated¹. Termination of the contract of service may take place through discharge of the seamen by the master², or abandonment³ or hostile capture⁴ of the vessel.

1 *The Sappho* (1871) LR 3 PC 690 at 694, 1 Asp MLC 65 at 66.

2 *The Warrior* (1862) Lush 476. The discharge will be valid even though improperly given by the master provided that there is no fraud on the part of the crew in accepting it: see *The Warrior* at 482.

3 The abandonment must be final, in good faith, and ordered by the master in consequence of danger: *The Florence* (1852) 16 Jur 572; *The Le Jonet* (1872) LR 3 A & E 556, 1 Asp MLC 438; *The Portreath* [1923] P 155, 16 Asp MLC 227; *The San Demetrio* (1941) 69 Ll L Rep 5; *The Albion* [1942] P 81, 72 Ll L Rep 91, CA. Whether there has been abandonment depends on the facts of each case: *The Albion*.

4 *The Two Friends* (1799) 1 Ch Rob 271 at 278; *The Governor Raffles* (1815) 2 Dods 14 at 17, 18 (where Lord Stowell expressed the view that, while hostile capture did, mutiny did not discharge the contract of service). See the doubts expressed in *The Florence* (1852) 16 Jur 572, and *Beale v Thompson* (1803) 3 Bros & P 405 at 430.

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935. Pilots.

There must be special circumstances of danger attending the performance of the pilot's duties¹ in order to justify a claim by him as a salvor². They may exist at the beginning of the pilotage service³ or they may supervene afterwards⁴. Whenever they occur, they must be of such a character as to make it unjust that the pilot should be paid otherwise than by a salvage reward⁵. The burden of showing that pilotage services were converted into salvage services rests strongly on the pilot⁶.

Where a pilot is called on in any emergency to perform services outside his duties as pilot, as, for example, rendering assistance to a vessel outside his pilotage district, or doing work other than pilotage, he is entitled to be treated as an ordinary salvor⁷.

1 As to pilotage see PARA 562 et seq.

2 *The Rosehaugh* (1854) 1 Ecc & Ad 267; *The Æolus* (1873) LR 4 A & E 29 at 31, 1 Asp MLC 516 at 578; *The Monarch* (1886) 12 PD 5, 6 Asp MLC 90; *The Aglaia* (1888) 13 PD 160, 6 Asp MLC 337; *The Ilo* [1982] 1 Lloyd's Rep 39 (where services were rendered by a pilot who co-ordinated the actions of the tugs). For the general principles affecting claims by pilots see *The Joseph Harvey* (1799) 1 Ch Rob 306; *Akerblom v Price* (1881) 7 QBD 129, 4 Asp MLC 441, CA.

3 *The Jonge Andries* (1857) Sw 226; affd sub nom *Halsey v Albertuszen*, *The Jonge Andries* Sw 303, PC.

4 *Newman v Walters* (1804) 3 Bos & P 612 at 616.

5 *Akerblom v Price* (1881) 7 QBD 129, CA; *The Bedeburn* [1914] P 146, 12 Asp MLC 530; cf *The Santiago* (1900) 9 Asp MLC 147.

6 *The Æolus* (1873) LR 4 A & E 29 at 31, 1 Asp MLC 516 at 519.

7 *The Hebe* (1844) 2 Wm Rob 246; *The Sandefjord* [1953] 2 Lloyd's Rep 557.

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936. Ship's agents.

A ship's agent who renders services in assisting to save the vessel or her cargo may, in spite of his contractual obligation, obtain a salvage reward¹. The admission of such claim is based on public policy². His claim may, it seems, be entertained even where he has incurred no personal risk and has made no extraordinary exertion³.

¹ *The Happy Return* (1828) 2 Hag Adm 198; *The Favorite* (1844) 2 Wm Rob 255; *The Purissima Concepcion* (1849) 3 Wm Rob 181; *The Honor (Cargo ex)* (1866) LR 1 A & E 87; *The Kate B Jones* [1892] P 366, 7 Asp MLC 332. In *The Watt* (1843) 2 Wm Rob 70, *The Lively* (1848) 3 Wm Rob 64 and *The Crusader* [1907] P 15, 10 Asp MLC 353 (on appeal [1907] P 196, 10 Asp MLC 442, CA), the claim was rejected.

² *The Purissima Concepcion* (1849) 3 Wm Rob 181 per Dr Lushington.

³ See *The Happy Return* (1828) 2 Hag Adm 198; *The Purissima Concepcion* (1849) 3 Wm Rob 181; *The Honor (Cargo ex)* (1866) LR 1 A & E 87.

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937. Passengers.

A passenger who remains on board a vessel in danger, being bound by a moral duty as well as by the interest of self-preservation to work for the safety of the vessel, is not entitled to claim as a salvor, unless he elects to remain on board and render assistance where he has the means of leaving, or unless he renders some special service, as, for example, taking command of the vessel¹.

¹ *Newman v Walters* (1804) 3 Bos & P 612 (taking command of a vessel on the rocks); *The Branston* (1826) 2 Hag Adm 3n; *The Vrede* (1861) Lush 322. See also *Towle v The Great Eastern* (1861) 2 Mar LC 148 (devising and rigging temporary steering gear); *The Merrimac* (1868) 18 LT 92 (soldiers on troopships by organised efforts prevented ships from sinking).

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938. Tugs under towage contract.

As regards salvage, the position of a tug under a contract¹ to tow the salved vessel is very similar to that of the pilot of the salved vessel², in that circumstances existing at the beginning of the towage service or supervening afterwards may convert a towage into a salvage service.

If, when the towage contract was entered into, material facts affecting the danger of the tow or the danger or the difficulty of the towage service such as make it unjust to expect the towage service to be undertaken at a towage rate were not disclosed to the owner of the tug or his representative making the contract, the towage contract is disregarded and the service is treated as a salvage service³.

If, also, during the towage the tow becomes in danger, through no fault of the tug, and the tug then renders services in the nature of salvage services such as could not reasonably be held to be within the intention of the parties, by means of which the ship is brought into a place of safety, the towage contract is superseded by the right to salvage reward⁴; but a slight departure from the way in which the towage contract was to be performed does not convert towage services into salvage services⁵, and the strictest proof of the circumstances which lead to such a claim is required⁶.

It used to be the law that, in no case where the danger of the tow has been created or materially contributed to by the misconduct or negligence or lack of reasonable skill or reasonable equipment on the part of the tug will the owner or crew of the tug be entitled to a salvage reward⁷, even though the tow has been guilty of contributory negligence⁸. However, the cases in which these principles were established were decided at a time when fault or contributory fault was a complete bar to any claim⁹. Article 18 of the International Convention on Salvage 1989 now provides that a salvor may be deprived of the whole or part of the payment due for salvage to the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part¹⁰. Accordingly, the extent to which a salvor may be deprived of salvage remuneration will depend upon the causative potency of his fault in causing the salvage operations to become necessary or more difficult¹¹.

It makes no difference that the tug has acted under a sub-contract, and not under a direct contract between the owner of the tug and the owner of the tow¹².

1 As to contracts of towage generally see PARA 587 et seq.

2 *The Saratoga* (1861) Lush 318 at 321.

3 *Akerblom v Price* (1881) 7 QBD 129 at 132, 4 Asp MLC 441 at 443, CA. Cf *The Kingalock* (1854) 1 Ecc & Ad 263; *The Canova* (1866) LR 1 A & E 54.

4 See *The Minnehaha* (1861) Lush 335, PC; *The Annapolis* (1861) Lush 355, PC; *The White Star* (1866) LR 1 A & E 68; *The Five Steel Barges* (1890) 15 PD 142, 6 Asp MLC 580; *The Liverpool* [1893] P 154, 7 Asp MLC 340; *The Westburn* (1896) 8 Asp MLC 130; *The Emilie Galline* [1903] P 106, 9 Asp MLC 401; *The Aboukir* (1905) 21 TLR 200; *The Glenmorven* [1913] P 141 (towage contract expressly stating 'no claim to be made for salvage' superseded). See also *The Liverpool* at 160 per Gorell Barnes J, for a statement of the proposition to be found in the cases; and *The Leon Blum* [1915] P 90 (affd [1915] P 290, 13 Asp MLC 273, CA).

5 *The Domby* (1941) 69 Ll L Rep 161; *The Slaney* [1951] 2 Lloyd's Rep 538.

6 *The Galatea* (1858) Sw 349; *The Minnehaha* (1861) Lush 335 at 348, PC; *The Liverpool* [1893] P 154 at 164, 7 Asp MLC 340 at 342; *The Maréchal Suchet* [1911] P 1, 11 Asp MLC 553. It seems that an engaged tug which takes on board the master and crew is not so far acting outside her duty that she can claim life salvage: *The Tarbert* [1921] P 372, 15 Asp MLC 423.

7 See *The Minnehaha* (1861) Lush 335 at 348, PC; *The Undaunted* (1886) 5 Asp MLC 580; *The Robert Dixon* (1879) 4 PD 121 (affd 5 PD 54, 4 Asp MLC 246, CA); *The Altair* [1897] P 105, 8 Asp MLC 224; *The Duc d'Aumale (No 2)* [1904] P 60, 9 Asp MLC 502; *The Harvest Home* [1904] P 409, 10 Asp MLC 19.

8 See *The Altair* [1897] P 105, 8 Asp MLC 224; *The Adam W Spies* (1901) 70 LJP 25; *The Duc d'Aumale (No 2)* [1904] P 60, 9 Asp MLC 502.

9 See *Maridive VII v Key Singapore, The Key Singapore* [2004] EWHC 2227 (Comm), [2005] 1 All ER (Comm) 99, [2005] 1 Lloyd's Rep 91.

10 See PARA 909.

11 See *Maridive VII v Key Singapore, The Key Singapore* [2004] EWHC 2227 (Comm), [2005] 1 All ER (Comm) 99, [2005] 1 Lloyd's Rep 91 (those on board the towed rig and those on board the tugs were held to be equally at fault for the failure to heave which necessitated salvage operations; reward apportioned accordingly).

12 *The Texaco Southampton* [1983] 1 Lloyd's Rep 94, NSW CA.

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939. Public officers; coastguards; foyboatmen.

Magistrates and other persons holding a public office or appointment may only obtain a salvage reward¹ in respect of services clearly outside the scope of their official duties². Employees of a public authority having a statutory duty to remove obstructions to navigation are not thereby excluded from claiming reward in respect of services beyond their ordinary duties as employees of that authority³. Officers and men of Her Majesty's Coastguard have duties with regard to watching for vessels in distress off the coasts, to initiate search and rescue measures for ships in distress and to render life-saving assistance by mustering or informing life-saving organisations and other authorities able to help⁴. If, however, they render services of the nature of salvage services beyond the scope of their official duties, they are entitled to be treated as ordinary salvors in respect of those services⁵.

Foyboatmen performing services involving considerable risk to themselves in conditions in which they would not normally be prepared to ply their ordinary trade may be entitled to salvage reward in respect of those services⁶.

1 As to salvage rewards see PARA 943 et seq.

2 *The Aquila* (1798) 1 Ch Rob 37 at 46-49 per Sir W Scott (dismissing the claim of a magistrate); *The Purissima Concepcion* (1849) 3 Wm Rob 181 at 184.

3 See *The Mars* (1948) 81 Ll L Rep 452 (salvage services to barges by employees of the Port of London Authority). See also *The Citos* (1925) 22 Ll L Rep 275 (employees of lighthouse authority removing salvaged vessel from fairway); *Bostonian (Owners, Master and Crew) v Gregerso (Owners)*, *The Gregerso* [1973] QB 274, [1971] 1 All ER 961, [1971] 2 Lloyd's Rep 220 (where a port authority was not entitled to salvage where it was exercising its statutory powers to remove a vessel obstructing a port).

4 See 574 HC Official Report (5th series), written answers, col 55. As to Her Majesty's Coastguard see PARA 57; and as to remuneration for coastguard services see PARA 990.

5 *The Charlotta* (1831) 2 Hag Adm 361; *The London Merchant* (1837) 3 Hag Adm 394; *Silver Bullion* (1854) 2 Ecc & Ad 70. See also 2 Pritchard's *Admiralty Digest* (3rd Edn) p 1920.

6 *The MacGregor Laird* [1953] 2 Lloyd's Rep 259. The foyboatmen service provides assistance to a vessel from shore-based seamen, eg in running lines from ship to shore.

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940. Lifeboat crews.

The members of lifeboat crews are paid for services rendered in saving life by the Royal National Lifeboat Institution¹. If, however, when they reach a vessel in distress, their services are required for the salvage of property alone, they are entitled to rank as salvors in respect of those services, being treated as having borrowed the lifeboat for the services, and are liable for any damage to the lifeboat occasioned by the salvage services². In that case lifeboatmen who merely assist in launching the lifeboat may be entitled to reward³.

1 See the salvage regulations by the institution set out in *The Cayo Bonito* [1904] P 310; *The Marlborough* (1943) 76 Ll L Rep 102. See also *The Guernsey Coast* (1950) 83 Ll L Rep 483; *The Africa Occidental* [1951] 2 Lloyd's Rep 107.

2 *The Auguste Legembre* [1902] P 123, 9 Asp MLC 279; *The Cayo Bonito* [1904] P 310, 9 Asp MLC 603; *The Corcrest* (1946) 80 Ll L Rep 78; *The Ocean Hound* (1950) 84 Ll L Rep 5. The burden of showing that their position has changed from that of salvors of life to that of salvors of property rests on the lifeboatmen: *The Marguerite Molinos* [1903] P 160, 9 Asp MLC 424 (where the claim failed).

3 *The Cayo Bonito* [1904] P 310, 9 Asp MLC 603. As to salvage rewards see PARA 943 et seq.

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(F) SUCCESSFUL SERVICE

941. Requirement of success.

To obtain a salvage reward¹ the salvor must, as a general rule, show that his service has been successful². Services, however meritorious, which do not contribute to the ultimate success give no right to reward³. Salvage reward is given for benefits actually conferred, not for a service attempted to be rendered⁴.

The claimant need not, however, prove that his service alone would have produced the ultimate safety of the subject of the service; it is sufficient for him to show that he materially contributed to its ultimate safety⁵, and, where there is a doubt whether a service has contributed to the ultimate safety, the court inclines to the view that the service has so contributed⁶.

No salvage reward is recoverable, however meritorious and hazardous the service may have been, and even though the property or lives in danger may have been ultimately preserved, if, at the termination of the service, the subject of the service has been left in a position not less dangerous than that in which it was at the commencement of the service, or the value at the conclusion of the service was no greater than at the commencement⁷. The mere fact that the claimant brought the ship to a spot where the ultimate salvor found her is not of itself a contribution to the ultimate success⁸.

1 As to salvage rewards see PARA 943 et seq.

2 See PARA 925. The principle known in English law as the requirement of success is preserved: see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 12(1) ('useful result'); and PARA 903. Cf art 13(1)(c) where the expression 'success' rather than 'useful result' is used: see PARA 904. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880. See also the principle of 'No Cure, No Pay'; and PARA 943 et seq.

3 *Melanie (Owners) v San Onofre (Owners)* [1925] AC 246 at 262, 16 Asp MLC 479 at 484, HL.

4 *The Zephyrus* (1842) 1 Wm Rob 329 at 330; *The EU* (1853) 1 Ecc & Ad 63 at 65; and see *The Killeena* (1881) 6 PD 193 at 198, 4 Asp MLC 472 at 473; *The Camellia* (1883) 9 PD 27 at 29, 5 Asp MLC 197 at 199; *The City of Chester* (1884) 9 PD 182 at 202, 5 Asp MLC 311 at 319, CA; *The Dart* (1899) 8 Asp MLC 481 at 482, 483; *Melanie (Owners) v San Onofre (Owners)* [1925] AC 246, 16 Asp MLC 479, HL.

5 *The Jonge Bastiaan* (1804) 5 Ch Rob 322; *The Atlas* (1862) Lush 518, PC; *The Camellia* (1884) 9 PD 27, 5 Asp MLC 197; *The Hestia* [1895] P 193, 7 Asp MLC 599; *The August Korff* [1903] P 166, 9 Asp MLC 428; *The Kangaroo* [1918] P 327.

6 *The EU* (1853) 1 Ecc & Ad 63; *The Santipore* (1854) 1 Ecc & Ad 231.

7 *The Cheerful* (1885) 11 PD 3, 5 Asp MLC 525; *The Benlarig* (1888) 14 PD 3, 6 Asp MLC 360; *The Lepanto* [1892] P 122, 7 Asp MLC 192; *The Dart* (1899) 8 Asp MLC 481; *The Tarbert* [1921] P 372, 15 Asp MLC 423.

8 *Melanie (Owners) v San Onofre (Owners)* [1925] AC 246 at 263, 16 Asp MLC 479 at 484, HL.

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942. Exception to requirement of success.

Where a service has been rendered at the request of the master or other person in charge of a vessel in danger in circumstances from which a promise to pay for the service can be implied, a salvage reward is payable for that service if the vessel is ultimately saved, even though the service did not contribute to its ultimate safety¹. Further, where, after such service has begun, and while those who have undertaken it are ready to complete it, the master of the vessel in danger discontinues the service, the service will be rewarded even though no material benefit has been derived from it². The court may also give some compensation for the loss suffered by reason of the act of the master in preventing the completion of the service³. The reward given in these cases is strictly a salvage reward. It is not assessed on the basis of a contract for work and labour, and, in the absence of express agreement to the contrary, it is contingent, like all other rewards for salvage proper, on the preservation of the property in danger or some part of it⁴.

1 *The Undaunted* (1860) Lush 90; and see *The Helvetia* (1894) 8 Asp MLC 264n; *The Cambrian* (1897) 8 Asp MLC 263; *The Dart* (1899) 8 Asp MLC 481 at 482, 483 (explaining the decision in *The Melpomene* (1873) LR 4 A & E 129, 2 Asp MLC 122 on the same grounds); *The Stiklestad* [1926] P 205, 17 Asp MLC 191 (affd 43 TLR 118, CA); *The Tarbert* [1921] P 372, 15 Asp MLC 423; *The Loch Tulla* (1950) 84 Ll L Rep 62; *The Alenquer, The Rene* [1955] 1 Lloyd's Rep 101.

Quaere whether the common law principle of 'engaged services' is still good law: see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 12(2); and PARA 903. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 *The Maude* (1876) 3 Asp MLC 338; *The Maasdam* (1893) 7 Asp MLC 400; *The Unique Mariner (No 2)* [1979] 1 Lloyd's Rep 37.

3 *The Valsesia* [1927] P 115, 17 Asp MLC 207; *The Unique Mariner (No 2)* [1979] 1 Lloyd's Rep 37. See also PARAS 969, 970.

4 See PARA 925.

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B. SALVAGE REWARD

(A) AGREEMENTS AS TO AMOUNT

943. Agreements in general.

An agreement may be made fixing the amount to be paid to the salvor for his services, but leaving untouched all the other conditions necessary to support a salvage reward, one of which is the preservation of some part at least of the property in peril¹, unless by a special agreement a salvage reward is to be paid independently of the ultimate safety of the property in danger². The usual agreement to render salvage services is on a 'No cure, No pay' basis³.

The agreement need not be in writing⁴, but it must be clearly proved⁵. It must state the services to be performed and the reward for them⁶. An agreement merely to refer to arbitration does not oust the jurisdiction of the court⁷. When duly proved, the agreement is prima facie binding, and the burden of proof lies on the party trying to set it aside⁸. There may be special circumstances in which the master or other person in charge of the property in danger is justified in binding the owner to pay for assistance⁹ independently of the ultimate safety of the property; such an agreement is a valid salvage agreement¹⁰.

1 Kennedy's *Law of Salvage* (5th Edn) p 23; *The Hestia* [1895] P 193 at 199, 7 Asp MLC 599 at 600.

2 *Wellfield (Owners) v Adamson and Short, The Alfred* (1884) 5 Asp MLC 214. Cf *The Prinz Heinrich* (1888) 13 PD 31 at 34, 6 Asp MLC 273 at 276; *The Edenmore* [1893] P 79, 7 Asp MLC 334; *The Strathgarry* [1895] P 264, 8 Asp MLC 19. See also PARA 983 et seq.

3 Where services are rendered under 'No cure, No pay' terms, they give rise to a maritime lien: *The Goulondris* [1927] P 182, 17 Asp MLC 209. See eg the principle of 'No Cure, No Pay' used in the Lloyd's Standard Form of Salvage Agreement ('Lloyd's Open Form'); and PARA 983 et seq. As to the maritime liens for salvage services see PARAS 1018, 1019, 1029.

4 *The Graces* (1844) 2 Wm Rob 294; *The Arthur* (1862) 6 LT 556 at 558; *The Cumbrian* (1887) 6 Asp MLC 151.

5 *The Graces* (1844) 2 Wm Rob 294 at 297.

6 *The William Lushington* (1850) 7 Notes of Cases 361 at 363.

7 *The Purissima Concepcion* (1849) 3 Wm Rob 181; and see *The City of Calcutta* (1898) 8 Asp MLC 442, CA.

8 *The Helen and George* (1858) Sw 368 at 369; *The Medina* (1876) 2 PD 5 at 7, 3 Asp MLC 305 at 306, CA; *Akerblom v Price* (1881) 7 QBD 129 at 132, 133, 4 Asp MLC 441 at 443, CA.

9 *Wellfield (Owners) v Adamson and Short, The Alfred* (1884) 5 Asp MLC 214. Cf *The Prinz Heinrich* (1888) 13 PD 31, 6 Asp MLC 273; *The Edenmore* [1893] P 79, 7 Asp MLC 334. As to the effect of such an agreement on an award see PARA 947.

10 *Admiralty Comrs v Valverde (Owners)* [1938] AC 173, [1938] 1 All ER 162, 59 Ll L Rep 231, HL.

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944. Setting aside salvage agreement.

An agreement as to the amount to be paid to the salvor may be set aside if it has been obtained by fraud¹, or by misstatement or non-disclosure, whether intentional or not², of a material fact, affecting, or not unlikely to affect, the danger of the property, or the risk, difficulty or duration of the salvage service³. Salvors are not held bound by an agreement where supervening circumstances, without the fault of either party, render the performance of the agreed service impossible, or where the service actually rendered was of a wholly different character from the agreed service⁴.

An agreement may also be set aside as being inequitable where the reward fixed by it is exorbitant⁵ or inadequate⁶. Where exorbitancy is the ground of a claim to set aside the agreement, the existence of circumstances showing that the master of the salvaged vessel was virtually compelled to enter into the agreement, although by no means essential⁷, is an important factor in obtaining the avoidance of the agreement⁸. The court does not, however, set aside an agreement merely because it would have awarded a rather larger or smaller sum than that fixed by the agreement, or because, in the events that happened, the services were more or less dangerous, difficult or time-consuming than was anticipated by either party at the time of the making of the agreement⁹, or because the salvaged value turns out to be less than the agreed salvage remuneration¹⁰.

A settlement made after services have been performed is not binding on the salvor if the reward to be paid is very inadequate, and either the salvor did not appreciate the value of his services¹¹ or the circumstances in which the settlement was made are not satisfactorily explained¹² or show that it was made against authority¹³.

The agreement may be cancelled by mutual consent¹⁴, evidenced by express agreement between the parties¹⁵ or by conduct from which the consent will be inferred¹⁶. The burden of proof of cancellation lies on the party setting it up¹⁷.

1 *The Henry* (1851) 15 Jur 183; *The Helen and George* (1858) Sw 368 at 369. For examples see *The Crus V* (1862) Lush 583 (bribe to agents of salvaged vessel); *The Generous* (1868) LR 2 A & E 57 (bribe to master of salvaging vessel); *The Kolpino* (1904) 73 LJP 29 at 30 (bribe to master of salvaged vessel). As to an agreement for salvage of a ship and not her cargo see *The Westminster* (1841) 1 Wm Rob 229 at 235.

Cf the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 18; and PARA 909. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 *The Kingalock* (1854) 1 Ecc & Ad 263 at 265; *The Canova* (1866) LR 1 A & E 54.

3 *The Kingalock* (1854) 1 Ecc & Ad 263. For examples of concealment of facts held in the circumstances to be immaterial see *The Henry* (1851) 15 Jur 183 (value of salvaged cargo); *The Jonge Andries* (1857) Sw 226 (affd Sw 303, PC); *The Canova* (1866) LR 1 A & E 54 (illness of some of salvaged crew). As to the first case see Kennedy's *Law of Salvage* (5th Edn) pp 772-776. As to misrepresentation and fraud see **MISREPRESENTATION AND FRAUD** vol 31 (2003 Reissue) PARA 701 et seq.

4 *The Westbourne* (1889) 14 PD 132, 6 Asp MLC 405, CA; and see *The Hestia* [1895] P 193, 7 Asp MLC 599. As to impossibility of performance and frustration see **CONTRACT** vol 9(1) (Reissue) PARA 888 et seq.

5 *The Henry* (1851) 15 Jur 183; *The Theodore* (1858) Sw 351; *The Woosung (Cargo ex)* (1876) 1 PD 260 at 270, 3 Asp MLC 239 at 241, CA; *Akerblom v Price* (1881) 7 QBD 129 at 132, 133, 4 Asp MLC 441 at 443, CA; *The Strathgarry* [1895] P 264 at 270, 8 Asp MLC 19 at 21. In *The Crusader* [1907] P 15, 10 Asp MLC 353 (on appeal

[1907] P 196, 10 Asp MLC 442, CA), the agreement was set aside, although it was the deliberate choice of the master of the salvaged ship.

6 *The Phantom* (1866) LR 1 A & E 58; and see *The Henry* (1851) 15 Jur 183.

7 *The True Blue* (1843) 2 Wm Rob 176 at 179; *Akerblom v Price* (1881) 7 QBD 129 at 132-133, 4 Asp MLC 441 at 443, CA; but see *The Woosung (Cargo ex)* (1876) 1 PD 260 at 263, 264, 3 Asp MLC 239 at 240, 241, CA. Cf *The Rialto* [1891] P 175 at 178, 179, 7 Asp MLC 35 at 36.

8 *The Medina* (1876) 2 PD 5, 3 Asp MLC 305, CA; *The Mark Lane* (1890) 15 PD 135, 6 Asp MLC 540; *The Rialto* [1891] P 175, 7 Asp MLC 35; *The Altair* [1897] P 105, 8 Asp MLC 224; *The Port Caledonia and The Anna* [1903] P 184, 9 Asp MLC 479.

9 *The True Blue* (1843) 2 Wm Rob 176 at 180; *The Cato* (1866) 35 LJ Adm 116 at 117; *The Waverley* (1871) LR 3 A & E 369, 1 Asp MLC 47; *The Strathgarry* [1895] P 264 at 271, 8 Asp MLC 19 at 21.

10 *The Inna* [1938] P 148, 60 LI L Rep 414.

11 *Silver Bullion* (1854) 2 Ecc & Ad 70.

12 *The Macgregor Laird* [1867] WN 308.

13 *The Hermione* [1922] P 162, 15 Asp MLC 493.

14 *The Repulse* (1845) 2 Wm Rob 396 at 397.

15 *The Africa* (1854) 1 Ecc & Ad 299.

16 *The Samuel* (1851) 15 Jur 407.

17 *The Betsey* (1843) 2 Wm Rob 167 at 172.

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945. Person bound by an agreement as to amount.

The owner of the salved ship is generally bound by an agreement as to amount entered into by the master¹, the master having an implied authority to bind his owner for all that is reasonably necessary for the successful navigation of the ship². The shipowner is not bound by it, however, where he was easily accessible and gave no authority to the master to enter into it³, or where in the circumstances the agreement was not reasonably necessary⁴, or where the terms of the agreement show that it is not for the benefit of the shipowner⁵. The implied authority to bind the owner is limited to the master or other person properly acting in command of the ship. To support such an agreement made by any other person strict proof of agency is required⁶.

The owner⁷ of the salving vessel, at least where he is not accessible and the master has no means of communicating with him⁸, and the crew⁹ are bound by a salvage agreement made by the master with regard to future services¹⁰. They are not bound by an agreement made by him after services have been performed in respect of which a right to a salvage reward has arisen¹¹. The owner of the salving vessel has the same limited power to bind the master and crew by a salvage agreement, that is to say he can bind them by agreement as to future, but not as to past services¹². If a salvage agreement is entered into by the master affecting both past and future services, that part of it which relates to the past services will be set aside, and the rest will be given effect to if it is otherwise valid¹³.

The owner of cargo on board the salved vessel is not bound by a salvage agreement made by the master, unless he is acting as the agent of the cargo owner¹⁴ and it is open to him to dispute the reasonableness of the reward fixed by it¹⁵.

Where salvage services are performed by a number of different salvors or sets of salvors, the mere accident of co-operation gives none of the salvors an implied agency to contract with the representatives of the salved vessel on behalf of his co-salvors¹⁶.

1 *The Henry* (1851) 15 Jur 183; *The Africa* (1854) 1 Ecc & Ad 299; *The Waverley* (1871) LR 3 A & E 369, 1 Asp MLC 47. Under the International Convention on Salvage 1989 (London 28 April 1989; Cm 1526), the master has the authority to conclude contracts for salvage operations on behalf of the owner of the vessel: see art 6(1); and PARA 897. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 *Anderson v Ocean Steamship Co* (1884) 10 App Cas 107 at 116, 5 Asp MLC 401 at 404, HL; *Beldon v Campbell* (1851) 6 Exch 886. See also *The Leon Blum* [1915] P 90 (affd [1915] P 290, 13 Asp MLC 273, CA). As to the authority and liability of masters generally see PARA 429 et seq.

3 *The Elise* (1859) Sw 436 at 440; and see *Beldon v Campbell* (1851) 6 Exch 886.

4 *The Mariposa* [1896] P 273, 8 Asp MLC 159; *The Renpor* (1883) 8 PD 115 at 118, 5 Asp MLC 98 at 100, CA.

5 Eg an agreement to save lives without property: *The Mariposa* [1896] P 273 at 280, 8 Asp MLC 159 at 161. See also *The Kilmahoe* (1900) 16 TLR 155, CA (agreement to pay where no liability). As to the master's power to bind his owner to submit the amount of reward to arbitration see *The City of Calcutta* (1898) 8 Asp MLC 442, CA.

6 In *The Crus V* (1862) Lush 583, the master of a ship in distress on a foreign coast and ignorant of the language was held to be entitled to delegate his authority to make a salvage agreement to the vice-consul of the flag to which the ship belonged.

7 *The Britain* (1839) 1 Wm Rob 40 at 43; *The Africa* (1854) 1 Ecc & Ad 299 at 300. As to the master's power to bind his owner to submit the amount to arbitration see *The City of Calcutta* (1898) 8 Asp MLC 442, CA.

8 *The Elise* (1859) Sw 436 at 440.

9 See *The Elise* (1859) Sw 436; *The Macgregor Laird* [1867] WN 308; *The Nasmyth* (1885) 10 PD 41, 5 Asp MLC 364; and *The Inchmaree* [1899] P 111, 8 Asp MLC 486, explaining *The Britain* (1839) 1 Wm Rob 40, and *The Sarah Jane* (1843) 2 Wm Rob 110 (where the crew was held not to be so bound).

10 *The Inchmaree* [1899] P 111, 8 Asp MLC 486. See also *The Margery* [1902] P 157, 9 Asp MLC 304, DC; *The Friesland* [1904] P 345, 10 Asp MLC 9.

11 See note 10.

12 *The Inchmaree* [1899] P 111, 8 Asp MLC 486.

13 *Anderson v Ocean Steamship Co* (1884) 10 App Cas 107 at 117, 5 Asp MLC 401 at 404, HL.

14 *China-Pacific SA v Food Corp of India, The Winson* [1979] 2 All ER 35, [1979] 1 Lloyd's Rep 167. Under the International Convention on Salvage 1989 the master or the owner of the vessel now has the authority to conclude contracts for salvage operations on behalf of the owner of the property on board the vessel: see art 6(2); and PARA 897.

15 *The Friesland* [1904] P 345, 10 Asp MLC 9. Where both salving and salvaged vessels are insured in associations under the articles of which salvage reward is to be mutually settled by committees of the associations, the arrangement does not bind the master and crew: *The Margery* [1902] P 157, 9 Asp MLC 304.

16 *The Charlotte* (1848) 3 Wm Rob 68 at 74.

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(B) AMOUNT FIXED BY THE COURT

946. General principles.

The amount of the salvage reward¹ is limited to the value of the property or the interest in property salvaged². Subject to that limitation, the amount of the reward, unless it is fixed by agreement³, is in the discretion of the court⁴, and, except in cases of absolute necessity, the court which tries the case should also assess the remuneration⁵.

As a general rule, where the owner of the salvaged property appears, the court will not award the salvor more than one-half of the value of the salvaged property, whether the property is derelict⁶ or not⁷. A variation in the exchange rate of a currency is not a relevant factor to take into account in fixing the award for salvage services⁸. The court has power to award interest on a salvage award whether the salvage services were or were not performed under a special contract⁹.

1 As to the criteria for fixing the reward see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13; and PARA 904. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

A salvor's claim survives in favour of his personal representative: *The Marquis of Huntly* (1835) 3 Hag Adm 246; *The Anna Helena* (1883) 5 Asp MLC 142.

2 *The Schiller (Cargo ex)* (1877) 2 PD 145, 3 Asp MLC 439, CA. Tax liability on the reward is not relevant: see *Island Tug and Barge Ltd v SS Makedonia (Owners)*, *The Makedonia* [1958] 1 QB 365, [1958] 1 All ER 236, [1957] 2 Lloyd's Rep 575. See also *The Frisia* [1960] 1 Lloyd's Rep 90 at 94, 96, CA, per Hodson LJ and Devlin LJ; cf *Tantalus (Master and Crew) v Telemachus (Owners)*, *The Telemachus* [1957] P 47, [1957] 1 All ER 72, [1957] 2 Lloyd's Rep 490, and *The Frisia* at 95 per Willmer LJ.

3 As to agreements see PARAS 943-945.

4 *The Ewell Grove* (1835) 3 Hag Adm 209 at 221; *The Cuba* (1860) Lush 14 at 15; *The City of Chester* (1884) 9 PD 182 at 187, 5 Asp MLC 311 at 313, 314, CA.

5 *Melanie (Owners) v San Onofre (Owners)* [1925] AC 246 at 256, 16 Asp MLC 479 at 482, HL.

6 For examples of awards in cases of a derelict exceeding one-half see *The Rasche* (1873) LR 4 A & E 127; *The Boiler ex Elephant* (1891) 64 LT 543, CA (where judgment was allowed to go by default, and there were charges which reduced the sum ultimately received by the salvors); *The Louisa* [1906] P 145, 10 Asp MLC 256 (where the whole of the net proceeds of sale of ship and cargo were awarded).

7 See, however, *The Erato* (1888) 13 PD 163, 6 Asp MLC 334. In *The Mercator* (1910) 26 TLR 450, where the owners appeared but did not put in a defence, the whole value was awarded.

8 *Teh Hu (Owners) and Owners of her Cargo and Freight v Nippon Salvage Co Ltd*, *The Teh Hu* [1970] P 106, [1969] 3 All ER 1200, [1969] 2 Lloyd's Rep 365, CA.

9 *The Aldora* [1975] QB 748, [1975] 2 All ER 69, [1975] 1 Lloyd's Rep 617; *The Rilland* [1979] 1 Lloyd's Rep 455.

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947. Assessment by the court.

In assessing the reward¹, the court endeavours to combine liberality to the salvor with justice to the owner of the salvaged property². It regards not merely the work done in the performance of the salvage service³, but the general interests of navigation and commerce⁴. Thus, it looks with favour on salvage services rendered by ships built and maintained for salvage services⁵. Because one of the main reasons why salvage remuneration is high is that, unless the vessel in danger is saved, no remuneration is payable at all, salvors who have acted under an agreement which entitled them to remuneration independently of success are not rewarded on the liberal scale applicable to other salvors⁶.

1 As to the criteria for fixing the reward see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13; and PARA 904. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 *HMS Thetis* (1833) 3 Hag Adm 14 at 62. As to the difficulty of assessing salvage rewards in times of inflation see *The Ilo* [1982] 1 Lloyd's Rep 39 at 42 per Sheen J; and *The Helenus and The Montagua* [1982] 2 Lloyd's Rep 261 at 265 per Sheen J.

3 *The Charlotte* (1848) 3 Wm Rob 68 at 71 per Dr Lushington ('the many and diverse ingredients of a salvage service'). There is divergence of judicial opinion as to the relative importance of these circumstances. Chief importance was attached in *The William Beckford* (1801) 3 Ch Rob 355 at 356 per Lord Stowell to the risk to salvors; in *The London Merchant* (1837) 3 Hag Adm 394 at 395 per Sir J Nicholl to the risk to salvaged property; in *The Werra* (1886) 12 PD 52 at 53, 6 Asp MLC 115 at 117 per Hannen J to the value of salvaged property; in *The City of Chester* (1884) 9 PD 182 at 202, 5 Asp MLC 311 at 319, CA, per Lindley LJ to the risk to salvors and salvaged property and the value of salvaged property.

4 *The William Beckford* (1801) 3 Ch Rob 355 at 356 per Lord Stowell; *The Industry* (1835) 3 Hag Adm 203 at 204 per Sir J Nicholl; *The City of Chester* (1884) 9 PD 182 at 203, 5 Asp MLC 311 at 319, CA, per Lindley LJ; *The Rilland* [1979] 1 Lloyd's Rep 455; *The Ilo* [1982] 1 Lloyd's Rep 39 at 42 per Sheen J.

5 See eg *The Glengyle* [1898] P 97, 8 Asp MLC 341, CA (affd [1898] AC 519, 8 Asp MLC 436, HL) (award of £19,000 on a salvaged value of £76,596); *The Scheidestad* (1933) 45 Ll L Rep 269 (award of £6,000 for services by two salvage vessels to an abandoned vessel on values of £8,900).

6 *The Lepanto* [1892] P 122, 7 Asp MLC 192; *The Kate B Jones* [1892] P 366, 7 Asp MLC 332; *The Edenmore* [1893] P 79, 7 Asp MLC 334.

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948. Danger to life.

Apart from the general considerations already mentioned¹, the first consideration which affects the amount of the reward is the existence of danger to life, whether on board the salving or the salvaged vessel, arising either from the position from which the salvaged property has been rescued or from the performance of the salvage service².

1 See PARA 946. As to the criteria for fixing the reward see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13; and PARA 904. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 *The Thomas Fielden* (1862) 32 LJPM & A 61 at 62. See also *The Buffalo* (1937) 58 Ll L Rep 302 at 306. As to salvage of persons see the International Convention on Salvage 1989 art 16; and PARA 907.

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949. Danger to property.

The degree of danger¹ from which property has been salvaged has a great influence on the amount of the reward². Danger may arise from various causes, for example the character and condition of the salvaged vessel and her cargo, the number, capacity and condition of the crew, the nature of the locality, the master's knowledge of it, the risk of attack by enemy vessels³, the season of the year, the state and prospect of the weather and the absence of other means of salvage. The greatest danger generally attaches to derelict⁴ property.

In some cases of derelict⁵, as much as one-half or thereabouts⁶, and in a few cases of exceptional character more than one-half, of the value of the salvaged property has been awarded⁷, and the award is often one-third of the salvaged value, unless the salvaged value is very large⁸.

1 The nature and degree of the danger is one of the criteria to be taken into account when fixing the reward: see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13(1)(d); and PARA 904. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 See eg *The Krypton* [1954] 2 Lloyd's Rep 451. As to separate awards where ship, cargo and freight have been exposed to different degrees of danger see *The Velox* [1906] P 263, 10 Asp MLC 277 (cargo of herrings).

3 See *The Carrie* [1917] P 224, 14 Asp MLC 321; *The Rambler v The Kotka* [1917] 2 IR 406, CA; *The Athamas* (1917) 14 Asp MLC 276.

4 As to the meaning of 'derelict' see PARA 987.

5 The former practice was to award one-half (see *The Blenden Hall* (1814) 1 Dods 414 at 421; *The Effort* (1834) 3 Hag Adm 165 at 167), but now the fact of the salvaged property being derelict is merely an ingredient to be considered in assessing the reward (see *Papayanni v Hocquard*, *The True Blue* (1866) LR 1 PC 250 at 256; *The Anna Helena* (1883) 5 Asp MLC 142; *The Janet Court* [1897] P 59 at 62, 63, 8 Asp MLC 223 at 224 (three special elements usually present in the case of a derelict are the high degree of danger to property salvaged special difficulty of approaching and aiding her and necessity of supplying part of salvor's crew to work her)).

6 See *The Livietta* (1883) 8 PD 24, 5 Asp MLC 132; *The Janet Court* [1897] P 59, 8 Asp MLC 223.

7 See PARA 946 note 6.

8 See eg *The Amérique* (1874) LR 6 PC 468, 2 Asp MLC 460 (£18,000 on a value of £190,000).

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950. Value of property salvaged.

The value of the salvaged property¹ is an important consideration in the assessment of reward², but it will not raise the reward out of due proportion to the services rendered³. If the value is large, the amount of the reward is usually a smaller proportion to the value than if the value is small⁴. As, however, the small value of salvaged property often renders it impossible to give an adequate reward⁵, when the value is large, a liberal reward is generally given in order to encourage the performance of salvage services⁶.

1 The salvaged value of the vessel and other property is one of the criteria to be taken into account when fixing the reward: see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13(1) (a); and PARA 904. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 *The Amérique* (1874) LR 6 PC 468 at 475, 2 Asp MLC 460 at 465; *The City of Chester* (1884) 9 PD 182 at 202, 5 Asp MLC 311 at 319, CA. As to the valuation of the salvaged property see PARA 884.

3 *The Amérique* (1874) LR 6 PC 468 at 475, 2 Asp MLC 460 at 465; *The Glengyle* [1898] P 97 at 103, 8 Asp MLC 341 at 345, CA; *The Queen Elizabeth* (1949) 82 Ll L Rep 803.

4 *The Amérique* (1874) LR 6 PC 468, 2 Asp MLC 460; *The City of Chester* (1884) 9 PD 182, 5 Asp MLC 311, CA.

5 See *The Erato* (1888) 13 PD 163, 6 Asp MLC 334.

6 *The Earl of Eglinton* (1855) Sw 7 at 8.

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951. Care, skill and knowledge of salvors.

The salvor is required to show the reasonable degree of care, skill and knowledge to be expected in the circumstances¹ from a person in his position²; and, if through the absence of it the owner of the salvaged property suffers loss, the reward is less than it otherwise would be³. Where, however, there are any mitigating circumstances such as a sudden emergency, allowance may be made for them in measuring the degree of care, skill and knowledge required, and the fact that resulting damage arose in rendering assistance which was invited by the salvor may be taken into consideration⁴.

1 As to the duties of the salvor and of the owner and master see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 8; and PARA 899. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 *The Lockwoods* (1845) 9 Jur 1017 at 1018. Breach of the duty to use reasonable care and skill involves liability to the potential claimant, and the principles as to standard of care recognised by the Admiralty courts are the same as those of the common law courts: *Anglo-Saxon Petroleum Co Ltd v Damant* [1947] KB 794, [1947] 2 All ER 465, 80 Ll L Rep 459, CA.

3 See *The Rosalie* (1853) 1 Ecc & Ad 188 (damage caused by ignorance); *The Perla* (1857) Sw 230 (bringing a derelict into an unsafe harbour); *The Magdalen* (1861) 31 LJPM & A 22; *The Dwina* [1892] P 58, 7 Asp MLC 173 (collision between salvaged and salving vessels); *The Alenquer, The Rene* [1955] 1 Lloyd's Rep 101 (salvor deprived of right to reward by unseamanlike action). In *The Dwina*, the full amount of damage was deducted.

4 *The CS Butler, The Baltic* (1874) 2 Asp MLC 237 at 238, 239.

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952. Misconduct by salvors.

Misconduct on the part of salvors¹ diminishes the reward and may cause forfeiture of all claim to reward², but criminal misconduct by the master and crew does not affect the owners, if they have not been privy to it³. The burden of proof of misconduct lies upon those who allege it, and strict proof of it is required⁴. In order to affect the reward, the misconduct need not have occasioned actual damage⁵.

1 As to the duties of the salvor and of the owner and master see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 8; and PARA 899; and as to the effect of the salvor's misconduct see art 18; and PARA 909. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 *The Magdalen* (1861) 31 LJPM & A 22; *The Atlas* (1862) Lush 518, PC. For examples see also *The Dantzic Packet* (1837) 3 Hag Adm 383, and *The Martha* (1859) Sw 489 (interfering with additional salvors); *The Yan-Yean* (1883) 8 PD 147, 5 Asp MLC 135 (refusing to take the master of the vessel on board her and to accept a tug's services); *The Capella* [1892] P 70, 7 Asp MLC 158 (improperly retaining possession of ship and cargo). In *The Pinnas* (1888) 6 Asp MLC 313 and *The Trumpeter* (1947) 80 Ll L Rep 263 (improperly refusing to surrender possession of the salvaged property), the salvors were deprived of costs: see PARA 959. See also *The Clan Sutherland* [1918] P 332 (theft of salvaged property). As to maritime liens created by salvage services see PARAS 1018, 1019, 1029.

3 *The Kenora* [1921] P 90.

4 *The Atlas* (1862) Lush 518 at 529, CA.

5 *The Glory* (1849) 13 Jur 991; *The Marie* (1882) 7 PD 203 at 205, 5 Asp MLC 27 at 28.

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953. Negligence of salvors.

Where actual loss or damage results from want of the requisite care, skill or knowledge¹, or misconduct, the reward, if it is not reduced by the amount of such loss or damage², will be diminished by an amount proportionate to the degree of negligence, unskilfulness, ignorance or misconduct proved³.

The court takes a lenient view of the conduct of salvors, and is slow to find them guilty of negligence, as the policy of the law is to encourage the rendering of salvage services, but the court will make such a finding in a proper case⁴. The owners may bring a claim or counterclaim for negligence against the salvors for damage caused to the vessel during the salvage operation even where this has achieved more good than harm⁵.

1 As to the required degree of care and skill see PARA 951. As to the duties of the salvor and of the owner and master see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 8; and PARA 899; and as to the effect of the salvor's misconduct see art 18; and PARA 909. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 See PARA 952; and see eg *The CS Butler, The Baltic* (1874) 2 Asp MLC 237; *The Dwina* [1892] P 58, 7 Asp MLC 173.

3 *The Cape Packet* (1848) 3 Wm Rob 122 at 125; *The Perla* (1857) Sw 230 at 231; *The Clan Sutherland* [1918] P 332. See also *Maridive VII v Key Singapore, The Key Singapore* [2004] EWHC 2227 (Comm), [2005] 1 All ER (Comm) 99, [2005] 1 Lloyd's Rep 91 (tugs towing a rig required to provide salvage services to the tow; fact-sensitive nature of any analysis of responsibility emphasised).

4 *The St Blane* [1974] 1 Lloyd's Rep 557.

5 *Tojo Maru (Owners) v NV Bureau Wijsmuller, The Tojo Maru* [1972] AC 242, [1971] 1 All ER 1110, [1971] 1 Lloyd's Rep 342, HL.

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954. Value of salving property.

The value of the property employed in the salvage service¹ is an important element in the assessment of the reward². It is not, however, the measure of limit of the reward³. Where the value is small, it has little influence. The value of the cargo on board affects the reward only in so far as it increases the risk and responsibilities of the owner of the salving vessel⁴.

1 The state of readiness and efficiency of the salvor's equipment and the value thereof are among the criteria to be taken into account when fixing the reward: see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13(1)(j); and PARA 904. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 *The City of Chester* (1884) 9 PD 182, 5 Asp MLC 311, CA; *The Werra* (1886) 12 PD 52 at 54, 6 Asp MLC 115 at 117.

3 *The Fusilier* (1865) Brown & Lush 341 at 350, PC.

4 Cf *Carmichael v Brodie, The Sir Ralph Abercrombie* (1867) LR 1 PC 454.

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955. Risk to salving property.

Intimately connected with the value of the salving property and its influence on the reward is the risk to which the salving property is exposed by the performance of the salvage service¹; and this is an important consideration².

Apart from the actual danger to the salving property, there are certain risks and responsibilities incurred by the salvor which are considered in the assessment of the reward. They may include the risk of forfeiture of a policy of insurance, contractual liability to the owners of cargo on board the salving vessel through deviation to save property³, and the responsibility involved in the use of Her Majesty's ships and passenger ships for salvage service⁴.

Where any serious risk or responsibility is found to have been involved in the performance of the salvage service, special consideration is shown to the claim of the master of the salving vessel as well as to that of the owner⁵.

1 The risk of liability and other risks run by the salvors or their equipment are among the criteria to be taken into account when fixing the reward: see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13(1)(g); and PARA 904. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 *The City of Chester* (1884) 9 PD 182, 5 Asp MLC 311, CA; *The Werra* (1886) 12 PD 52, 6 Asp MLC 115; *The Rambler v The Kotka* [1917] 2 IR 406 (Ir CA).

3 *Carmichael v Brodie, The Sir Ralph Abercrombie* (1867) LR 1 PC 454; *Scaramanga v Stamp* (1880) 5 CPD 295, 4 Asp MLC 295, CA; *The Farnley Hall* (1881) 4 Asp MLC 499, CA; *The Edenmore* [1893] P 79, 7 Asp MLC 334. Deviation to save life does not involve risk to insurance or liability to owners of cargo: see *Scaramanga v Stamp*.

4 *The Martin Luther* (1857) Sw 287 at 289.

5 See PARA 963.

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956. Duration of services.

The length of the salvage operations¹ has not, in general, been a very important element for consideration, unless the services were dangerous or invoked protracted exertion². The additional loss or expense incurred by salvors by reason of the duration of their services has, however, been taken into consideration in the assessment of the reward³.

The labour involved in the salvage service is an important element only so far as it is accompanied by the exercise of skill, or by danger or responsibility⁴.

1 The time used and expenses and losses incurred by the salvors are among the criteria to be taken into account when fixing the reward: see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13(1)(f); and PARA 904. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 *The Thomas Fielden* (1862) 32 LJPM & A 61 at 62; *The Strathgarry* [1895] P 264 at 270, 8 Asp MLC 19 at 20.

3 See PARA 957.

4 Thus, the seaman ordinarily receives less than the officer: see PARA 964.

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957. Salvor's losses or expenses.

In assessing the amount of the salvage reward the expenses and losses incurred by the salvor are usually taken into account¹. Those losses and expenses may be given in the form of a separate award, but the common practice is to include them in the general award². The losses and expenses which are dealt with in this manner include expenses reasonably incurred in bringing the salvaged property into a place of safety³, and expenses such as the cost of repairing damage⁴, loss by detention during repairs⁵, depreciation in value of the salvaging vessel⁶, penalties under contract⁷, and loss of profits⁸, caused by the performance of the salvage service⁹. If the damage which necessitated repairs occurred during the salvage service, the inference is that the damage resulted directly from the service, and the burden of proof lies on those who dispute it¹⁰.

1 The time used and expenses and losses incurred by the salvors are among the criteria to be taken into account when fixing the reward: see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13(1)(f); and PARA 904. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

2 See eg *The Lycaon* (1949) 82 Ll L Rep 691.

3 *The Le Jonet* (1872) LR 3 A & E 556, 1 Asp MLC 438 (hire of men to pump). See also *The Pinnas* (1888) 6 Asp MLC 313 at 314.

4 *The James Armstrong* (1875) 3 Asp MLC 46; *The Mud Hopper No 4* (1879) 4 Asp MLC 103; *The Sunnyside* (1883) 8 PD 137, 5 Asp MLC 140; *Bird v Gibb, The De Bay* (1883) 8 App Cas 559, 5 Asp MLC 156, PC; *Baku Standard (Owners) v Angèle (Owners)* [1901] AC 549, 9 Asp MLC 197, PC; *The Fairport* [1912] P 168, 12 Asp MLC 165.

5 See the cases cited in note 4.

6 *Bird v Gibb, The De Bay* (1883) 8 App Cas 559, 5 Asp MLC 156, PC.

7 *The Silesia* (1880) 5 PD 177, 4 Asp MLC 338.

8 As to loss of profits in the case of fishing vessels see *The Salacia* (1829) 2 Hag Adm 262 at 270; *The Sunnyside* (1883) 8 PD 137, 5 Asp MLC 140; *The Fairport* [1912] P 168, 12 Asp MLC 165. As to other vessels see *Bird v Gibb, The De Bay* (1883) 8 App Cas 559, 5 Asp MLC 156, PC; *The Edenmore* [1893] P 79, 7 Asp MLC 334; *The Bremen* (1906) 10 Asp MLC 229; *The Cato* (1930) 37 Ll L Rep 33 at 37; *The Comitas* (1934) 49 Ll L Rep 43 at 50; *The St Melante* (1947) 80 Ll L Rep 588; *The Tresco* (1944) 77 Ll L Rep 514; *The Perfective* (1949) 82 Ll L Rep 873; *The Ebor Jewel* (1949) 83 Ll L Rep 64.

9 No interest is allowed: *Bird v Gibb, The De Bay* (1883) 8 App Cas 559, 5 Asp MLC 156, PC.

10 *The Thomas Blyth* (1860) Lush 16; *Baku Standard (Owners) v Angèle (Owners)* [1901] AC 549 at 552, 9 Asp MLC 197 at 199.

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958. Grounds of appeal.

If the reward fixed by the court is made the subject of appeal, whether on the ground of excess or inadequacy, as a general rule it will be disturbed only where it is shown that the court below has erred in principle or has misapprehended the facts¹. An award may, however, be altered on appeal on the ground of exorbitancy or inadequacy if it is clearly shown to be so greatly in excess as to be unjust to the owners of the salvaged property or so inadequate as to be unfair to the salvors². If an unsuccessful appeal to the Court of Appeal is followed by an appeal to the House of Lords, the case must be very exceptional to induce the House of Lords to interfere³.

Where a salvage action has been wrongly dismissed, the Court of Appeal, reversing that decision, may, if the facts are before it, itself award the amount of the salvage reward⁴.

1 *The Star of Persia* (1887) 6 Asp MLC 220 at 221, CA. See also eg *The Amérique* (1874) LR 6 PC 468, 2 Asp MLC 460 (reduction of reward, undue weight being given to salvaged value); *Bird v Gibb, The De Bay* (1883) 8 App Cas 559, 5 Asp MLC 156, PC (reduction of award on ground of erroneous view of evidence and too high a remuneration for services); *The Accomac* [1891] P 349, 7 Asp MLC 153, CA (increase of reward on grounds of underrating danger and difficulties); *The Port Hunter* [1910] P 343, 11 Asp MLC 492, CA (reduction of reward on grounds of undue weight given to value of salvaged property). See also *The Rambler v The Kotka* [1917] 2 IR 406 (Ir CA). As to adjustment see PARA 982.

2 *The Clarisse* (1856) Sw 129 at 134, PC (approved in *Arnold v Cowie, The Glenduror* (1871) LR 3 PC 589, 1 Asp MLC 31); *The Amérique* (1874) LR 6 PC 468, 2 Asp MLC 460; *Thomas Allen (Owners) v Gow, The Thomas Allen* (1886) 12 App Cas 118, PC. See also the judgments, to substantially the same effect, in *The Lancaster* (1883) 9 PD 14, 5 Asp MLC 174, CA; *The Star of Persia* (1887) 6 Asp MLC 220, CA; *The Accomac* [1891] P 349, 7 Asp MLC 153, CA; *The Glengyle* [1898] P 97, CA (affd [1898] AC 519, 8 Asp MLC 436, HL); *The Port Hunter* [1910] P 343, 11 Asp MLC 492, CA. Inadequacy is as good an objection to an award as exorbitancy: *The Chetah* (1868) LR 2 PC 205 at 210, 211; *The Cruiser v The Taquary* 1913 SC 1107. For examples of successful and unsuccessful appeals against awards see Kennedy's *Law of Salvage* (5th Edn) pp 1337-1340. See also *The Frisia* [1960] 1 Lloyd's Rep 90, CA.

3 *The Glengyle* [1898] AC 519 at 520, 8 Asp MLC 436 at 437, HL.

4 *The Minnehaha* (1861) Lush 335, PC.

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(C) RECOVERY

959. Rights in rem.

The salvor has a possessory lien on the salvaged property which will be recognised in a court of common law¹, and he also has in Admiralty, independently of possession, a maritime lien on the salvaged property². No proceedings in rem may, however, be instituted against any of Her Majesty's ships or aircraft, or cargo or other property belonging to the Crown³.

The remedy in rem is so complete that any attempt on the salvor's part to retain exclusive possession of the salvaged property, except where the property is derelict⁴, or he can show that otherwise he would lose the security for his reward⁵, or that he is justified by special circumstances⁶, may be visited by the court with a diminution of the reward⁷ or the loss of the costs of his action⁸ or, in an extreme case, the forfeiture of all title to reward⁹.

In the case of derelict property, the first salvor in possession has ordinarily an exclusive right to possession until his claim has been satisfied; he is also entitled to a declaration as to possession, an injunction restraining naval salvors from interfering with the property, and damages¹⁰, but he may prejudice and even forfeit his claim if he insists on retaining possession and in the circumstances of the case the court is of opinion that he has no right to do so¹¹.

1 *Hartfort v Jones* (1698) 1 Ld Raym 393. Possessory liens (also sometimes described as common law liens) are now usually referred to as legal liens: see **LIEN** vol 68 (2008) PARAS 802, 817 et seq.

2 See PARA 112. As to maritime liens for salvage services see PARAS 1018, 1019, 1029.

3 See the Crown Proceedings Act 1947 s 29(1); and PARA 179. As to the court's power to order that proceedings instituted in rem against the Crown are to be treated as proceedings in personam see PARA 179. As to Admiralty claims in rem generally see PARA 158 et seq.

4 *Cossman v West, Cossman v British America Assurance Co* (1887) 13 App Cas 160 at 181, 6 Asp MLC 233 at 239, PC. Cf *The Gertrude* (1861) 30 LJPM & A 130. As to the meaning of 'derelict' see PARA 987.

5 *The Glasgow Packet* (1844) 2 Wm Rob 306 at 312, 313.

6 *The Orbona* (1853) 1 Ecc & Ad 161 at 165; *The Pinnas* (1888) 6 Asp MLC 313; *The Elise* [1899] WN 54.

7 *The Glasgow Packet* (1844) 2 Wm Rob 306.

8 *The Pinnas* (1888) 6 Asp MLC 313; *The Trumpeter* (1947) 80 Ll L Rep 263.

9 *The Barefoot* (1850) 14 Jur 841; *The Champion* (1863) Brown & Lush 69; *The Capella* [1892] P 70, 7 Asp MLC 158.

10 *Cossman v West, Cossman v British America Assurance Co* (1887) 13 App Cas 160, 6 Asp MLC 233, PC; *The Tubantia* [1924] P 78, 18 Ll L Rep 158.

11 *The Lady Worsley* (1855) 2 Ecc & Ad 253 at 255.

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960. Rights in personam.

In addition to the right of action in rem¹, the salvor also possesses in Admiralty a right of action in personam² against the owners of the salvaged property³, but limited, in the absence of special contract⁴, to cases where property⁵ or an interest in property⁶ has been saved to the person sued and to the extent of such property or interest⁷.

1 See PARA 959.

2 As to payment of a reward see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13(2), (3); and PARA 904; as to special compensation see art 14; and PARA 905; as to apportionment between salvors see art 15; and PARA 906; and as to limitation of actions see art 23; and PARA 914. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

3 See PARA 104 et seq. See also *The Two Friends* (1799) 1 Ch Rob 271 at 277; *The Schiller (Cargo ex)* (1877) 2 PD 145 at 149, 3 Asp MLC 439 at 441, CA; *The Five Steel Barges* (1890) 15 PD 142 at 146, 6 Asp MLC 580 at 582; *The Elton* [1891] P 265, 7 Asp MLC 66; *The Port Victor (Cargo ex)* [1901] P 243, 9 Asp MLC 182, CA.

4 *The Sarpedon (Cargo ex)* (1877) 3 PD 28 at 34, 3 Asp MLC 509 at 510; *The Prinz Heinrich* (1888) 13 PD 31 at 34, 6 Asp MLC 273 at 276.

5 *The Sarpedon (Cargo ex)* (1877) 3 PD 28 at 34, 3 Asp MLC 509 at 510; *The Renpor* (1883) 8 PD 115 at 117, 5 Asp MLC 98 at 100, CA; *The Elton* [1891] P 265 at 269, 7 Asp MLC 66 at 67; *The Port Victor (Cargo ex)* [1901] P 243 at 255, 256, 9 Asp MLC 182 at 184, CA.

6 *The Five Steel Barges* (1890) 15 PD 142 at 146, 6 Asp MLC 580 at 582; *The Port Victor (Cargo ex)* [1901] P 243 at 249, 255, 9 Asp MLC 182 at 183, 184, CA.

7 *The Schiller (Cargo ex)* (1877) 2 PD 145 at 157, 3 Asp MLC 439 at 444, CA; *Admiralty Comrs v Josefina Thorden (Owners)*, *The Josefina Thorden* [1945] 1 All ER 344.

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(D) APPORTIONMENT

961. Agreements for apportionment.

An agreement between salvors as to the apportionment of the salvage reward amongst themselves, whether made before¹ or after² the services have begun, is binding on them if it has been made fairly and honestly³, and the court will not set aside such an agreement merely because it would not have made the same apportionment⁴. At the same time, the court is careful to protect seamen from improvident arrangements⁵, and sets aside those agreements whenever they are shown to be inequitable⁶.

A seaman is prevented by statute from abandoning by agreement any right he may have or obtain in the nature of salvage⁷, whether the agreement is made before or after the performance of the salvage service⁸. This does not, however, affect such of the terms of any agreement⁹ made with the seamen belonging to a ship which is to be employed on salvage service, with regard to the salvage remuneration to be paid to them¹⁰; such an agreement, if it is equitable and honestly made, will be binding upon them¹¹, but must be strictly proved¹².

An agreement for the division of salvage rewards may be implied from the usage of a particular locality or occupation¹³. Such an agreement will be upheld only if it is equitable¹⁴.

1 *The James Armstrong* (1875) 3 Asp MLC 46; *The Sunnside* (1883) 8 PD 137, 5 Asp MLC 140; *The Wilhelm Tell* [1892] P 337, 7 Asp MLC 329.

2 *The Afrika* (1880) 5 PD 192, 4 Asp MLC 266.

3 *The Enchantress* (1860) Lush 93; *The Afrika* (1880) 5 PD 192 at 196, 4 Asp MLC 266 at 268. As to apportionment generally see PARAS 887-889.

4 *The Afrika* (1880) 5 PD 192, 4 Asp MLC 266.

5 *The Wilhelm Tell* [1892] P 337 at 348, 7 Asp MLC 329 at 331.

6 *The Beulah* (1842) 1 Wm Rob 477; *The Louisa* (1843) 2 Wm Rob 22.

7 See the Merchant Shipping Act 1995 s 39(1); and PARA 476. An agreement between owner and crew that before division of the salvage reward the owner is to be entitled to deduct from the amount of the reward the cost of repairing damage sustained by the salvaged vessel in the service is void as being inconsistent with the statutory provision: *The Saltburn* (1894) 7 Asp MLC 474; and see *The Wilhelm Tell* [1892] P 337, 7 Asp MLC 329; *The Leon Blum* [1915] P 290, 13 Asp MLC 273, CA.

8 *The Rosario* (1876) 2 PD 41 at 45, 3 Asp MLC 334 at 336.

9 The agreement need not be in writing: *The Pride of Canada* (1863) Brown & Lush 208.

10 See the Merchant Shipping Act 1995 s 39(2); and PARA 476. A vessel is not within the exception merely because its articles contain a provision regulating the division of salvage rewards: *The Wilhelm Tell* [1892] P 337, 7 Asp MLC 329 (trawler).

11 *The Ganges* (1869) LR 2 A & E 370.

12 *The Pride of Canada* (1863) Brown & Lush 208; *Nicholson v Leith Salvage and Towage Co Ltd* 1923 SC 409.

13 *The Enchantress* (1860) Lush 93 at 97. A custom on the east coast that boatmen and a tug should share the reward equally is not inequitable: *The Sandsend* (1903) (cited in Kennedy's *Law of Salvage* (5th Edn) p 1237). A custom excluding from a share in the reward those in the fishing trade who receive wages is inequitable: *The John* (1846) 2 Pritchard's Admiralty Digest (3rd Edn) 1890. See also *The Sarah* (1878) 3 PD 39, 3 Asp MLC 542 (where a custom was alleged to exist at Liverpool fixing the percentage of the reward due to the master and crew of a tug).

14 See note 13.

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962. Apportionment to owners.

Where the principal means of effecting the salvage service has been the salving vessel, her owners receive the largest share of the salvage reward, and their share is even larger where the salving vessel and her cargo were valuable and were exposed to great risk by the performance of the services¹. Where the salvage service has been effected chiefly by the services of the crew, and the salving vessel and her cargo have not been exposed to any serious risk, the crew are entitled to the larger share in the reward². Where the salving vessel is the chief instrument in effecting the salvage, the share of the owners in a salvage reward has been generally approximate to three-quarters of the whole award³, but there is no rule of practice on the point⁴. The apportionment depends on the particular circumstances of each case⁵, and there are many examples of variation in apportionment to owners⁶.

1 Cf *The Enchantress* (1860) Lush 93 at 96.

2 *The Jane* (1831) 2 Hag Adm 338 at 343; *The Nicolina* (1843) 2 Wm Rob 175.

3 Before 1870, one-half was the most given; from 1870 to 1883, it was usually two-thirds, and since 1883 it has been usually three-quarters.

4 See *SS Nestor (Owners) v Mungana (Owners), The Mungana* [1936] 3 All ER 670.

5 *The Gipsy Queen* [1895] P 176 at 177, 7 Asp MLC 586, CA.

6 See Kennedy's *Law of Salvage* (5th Edn) p 1221 et seq.

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963. The master's share.

The master of the salving ship usually receives a special apportionment by reason of the special responsibility which he undertakes in the performance of a salvage service¹. The share given to him varies according to the degree of responsibility cast on him. It has often been from one-half to one-third of the balance of the award after deducting the sum apportioned to the owners. There is, however, no rule of practice governing his share².

1 *The Martin Luther* (1857) Sw 287 at 289, 290; *The Charles* (1872) LR 3 A & E 536 at 538, 1 Asp MLC 296 at 298.

2 *The Gipsy Queen* [1895] P 176 at 177, 7 Asp MLC 586, CA.

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964. Share of officers and crew.

Officers and crew generally share in the sum for salvage awarded to them collectively according to their ratings subject to an exception in favour of navigating officers with ratings lower than that of engineers, who are allowed to rank for the purpose of salvage as of the same ratings as engineers¹. Special rewards may be given to officers or members of the crew who have rendered special services².

1 *The Birnam* (1907) 10 Asp MLC 462. The crew includes 'runners', or men engaged for a single 'run', who may share on the basis of the rating of the persons whose posts they are filling (*The Persia* [1902] WN 210; but see *The Rasche* (1873) LR 4 A & E 127 (where they were treated as ABs)); and apprentices, with regard to whom there is no special scale of reward (*The Hope* (1838) 3 Hag Adm 423 (shares of seamen of lowest rank); *The Beulah* (1842) 1 Wm Rob 477 (one-half of ABs' shares); *The George Dean* (1857) Sw 290 (two-thirds of ABs' shares); *The Rasche* (1873) LR 4 A & E 127 (ABs' shares); *The Punta Lara* (1910) 26 TLR 268 (OSs' shares); *The Valkyrie* [1910] WN 138 (ABs' shares)). In *The Empire Gulf* [1948] P 168, [1948] 1 All ER 564, 81 Ll L Rep 255, the award was held apportionable according to basic rates of pay, war bonus thus disregarded. See also *The Southern Venturer* [1953] 1 Lloyd's Rep 428; *The New Australia* [1958] 2 Lloyd's Rep 35 (where the mate ranked as equivalent to the chief engineer).

2 See eg *The Golondrina* (1867) LR 1 A & E 334; *The Rasche* (1873) LR 4 A & E 127; *The Skibladner* (1877) 3 PD 24, 3 Asp MLC 556; *The Santiago* (1900) 9 Asp MLC 147; *The Minneapolis* [1902] P 30, 9 Asp MLC 270; *The Clan Sutherland* [1918] P 332.

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965. Share of associates and passengers.

The shares of the associates¹ of the actual salvors depend on the amount of additional labour and danger imposed on them through the services of the actual salvors².

The amount of the reward of passengers who become entitled to salvage reward depends on the nature and circumstances of the services³.

1 The rule of personal service does not extend to the associates: see PARA 930.

2 The non-navigating members of the crew were given in *The Spree* [1893] P 147, 7 Asp MLC 397, one-half shares, according to their ratings; in *The Dunottar Castle* [1902] WN 70, and *The Minneapolis* [1902] P 30, 9 Asp MLC 270, one-third shares, according to their actual rating. In *The Punta Lara* (1910) 26 TLR 268 a stewardess was refused any share.

3 See *The Hope* (1838) 3 Hag Adm 423 (shares of ABs); *The Perla* (1857) Sw 230 (foreign master and seamen passengers on salving vessel given ABs' shares, the master taking a double share). For very special services see *Newman v Walters* (1804) 3 Bos & P 612; *Towle v The Great Eastern* (1861) 2 Mar LC 148 (US District Court of Admiralty).

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966. Officers and men of the Royal Navy and other services.

Officers and men of the Royal Navy can obtain an apportionment from the court, but, if an apportionment is not made by the court, the distribution of salvage is regulated by the naval prize proclamation in force at the time¹. Similarly, officers and men of Her Majesty's Coastguard and of revenue boats may either obtain an apportionment by the court or rely on rules laid down by the Secretary of State for the distribution of salvage among them². Lifeboat crews who become entitled to rank as salvors may obtain an apportionment from the court³.

1 See **ARMED FORCES** vol 2(2) (Reissue) PARA 168; Kennedy's Law of Salvage (5th Edn) p 532 et seq; and *The Mary Ann* (1823) 1 Hag Adm 158 at 161.

2 As to the Secretary of State see PARA 38.

3 See PARA 940.

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967. Independent salvors.

Where persons who perform salvage services are independent salvors, as distinguished from members of a crew or others who act in association, the apportionment to them is determined by consideration of the risk, labour, skill, responsibility and value of their respective services¹.

¹ See eg *Nicolaas Witzen* (1837) 3 Hag Adm 369.

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968. Separate sets of salvors.

Where salvage services have been performed by several independent sets of salvors, then, if their services have been contemporaneous, their shares of a salvage award are determined by the principles applicable to the assessment of the whole award. Where a tender is made and the circumstances are within the knowledge of the salvaged vessel, independent salvors may require the defendant to apportion the sum tendered¹. Accordingly, a set of salvors who save both life and property usually receive a higher apportionment than a set of salvors who have salvaged property only².

1 *The Burnock* (1914) 12 Asp MLC 490. See also *The Athamas* (1917) 14 Asp MLC 276. In *The Bosworth* [1960] 1 All ER 146, [1961] 1 WLR 312, [1959] 2 Lloyd's Rep 537, the court in the exercise of its discretion would not relieve the defendants of making an apportionment of the lump sum tendered.

2 *The Clarisse* (1856) Sw 129, PC; *The Anna Helena* (1883) 5 Asp MLC 142.

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969. First and second sets of salvors.

Where the salvage services have not been contemporaneous, but subsequently to the inception of the services another set of salvors, with the consent of the first set, have joined in the services or have succeeded the first set, who, after rendering some assistance, have been compelled by circumstances, through no fault of their own, to abandon the services, special favour is usually shown to the first set of salvors.

The object of so doing is to encourage promptitude in the rendering of salvage services and willingness to accept additional assistance where such assistance is advisable¹. If a second set of salvors dispossesses the original salvors against the will of the original salvors and while they are willing to continue their services, the second set of salvors are entitled to no reward unless they can prove that there was no reasonable probability that the services of the first salvors would have met with success²; in default of such proof the whole reward is given to the first salvors³. If however, the second set of salvors in dispossessing the first set acted under an honest and not unreasonable, although mistaken, belief that their interference was necessary, they may receive some reward, and in that case the original salvors are entitled to the same reward which they would have been awarded if they had completed the salvage service⁴.

Where the services of the original salvors have been intermittent, and during an interval in the performance of them a second set of salvors have intervened against their wishes and rendered beneficial services, the second set of salvors receive a reward, although, if the interference of the second salvors is accompanied by the exercise of force, the reward is very much reduced⁵.

1 *The Santipore* (1854) 1 Ecc & Ad 231; *The EU* (1853) 1 Ecc & Ad 63.

2 The burden of proof is on the second set of salvors: *The Eugene* (1834) 3 Hag Adm 156 at 160.

3 *The Fleece* (1850) 3 Wm Rob 278 at 280; *The Samuel* (1851) 15 Jur 407 at 409, 410 (approving *The Blenden Hall* (1814) 1 Dods 414). See also *The Pickwick* (1852) 16 Jur 669.

4 *The Maria* (1809) Edw 175; *The Charlotta* (1831) 2 Hag Adm 361; *The Tubantia* [1924] P 78, 18 Ll L Rep 158.

5 *The Clarisse* (1856) Sw 129, PC.

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970. Intervention.

If the property in danger was not derelict¹ and was in charge of the owner or the master or other representative of the owner, and that person accepted the services of salvors, a second set of salvors intervening without any invitation or necessity receive no reward². Original salvors have no right, however, to insist on the continuance of their services or to refuse additional assistance in defiance of the wishes of the owner of the property in danger or his representative or of the interests in the property³.

Unless the property in danger is strictly derelict, the salvors are bound to submit to the orders of the owner of the property or his representative⁴. If they fail to do so, the reward is diminished or perhaps forfeited altogether⁵. Even in the case of derelict property, where the salvor has a vested interest and a right of exclusive possession⁶, the first salvors may not refuse further assistance if the interests of the property demand it⁷. If they are dispossessed or superseded by the orders of the owner of the property in peril or his representative while they are able and willing to complete the salvage service, they receive a liberal reward⁸, and the court is not very careful to inquire whether the dispossession or supersession was necessary and proper⁹. If the intervention of the second salvors was necessary for the safety of the property, the first salvors are liberally rewarded for any beneficial services rendered by them¹⁰.

1 As to the meaning of 'derelict' see PARA 987.

2 *The Glasgow Packet* (1844) 2 Wm Rob 306 at 313; *The Fleece* (1850) 3 Wm Rob 278 at 281; *The Barefoot* (1850) 14 Jur 841 at 842; *The Samuel* (1851) 15 Jur 407 at 410.

3 *The Champion* (1863) Brown & Lush 69 at 71. For a case where refusal to allow intervention of the master of the salvaged ship was held to be justified see *The Elise* [1899] WN 54.

4 See note 3.

5 *The Dantzic Packet* (1837) 3 Hag Adm 383 (forcibly excluding assistance); *The Glasgow Packet* (1844) 2 Wm Rob 306 (insisting on continuing services dispensed with). See also *The Capella* [1892] P 70, 7 Asp MLC 158.

6 *Cossman v West*, *Cossman v British America Assurance Co* (1887) 13 App Cas 160 at 181, 6 Asp MLC 233 at 238, PC.

7 *The Cambria* (1848) 2 Pritchard's Admiralty Digest (3rd Edn) 1822.

8 *The Maude* (1876) 3 Asp MLC 338; *The Unique Mariner (No 2)* [1979] 1 Lloyd's Rep 37 (where the salvor was held to be entitled to payment for services rendered and compensation for the loss of opportunity to complete the salvage).

9 *The Maasdam* (1893) 7 Asp MLC 400 at 401.

10 *The Pickwick* (1852) 16 Jur 669; *The Magdalen* (1861) 31 LJPM & A 22; *The American Farmer* (1947) 80 LI L Rep 672.

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971. Misconduct of salvors.

The misconduct of one set of salvors does not affect the right of another set to obtain reward, unless they were involved in the misconduct¹.

¹ *The Neptune* (1842) 1 Wm Rob 297; *The Scindia* (1866) LR 1 PC 241. See PARA 952.

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(E) CONTRIBUTION

972. Liability to contribute.

All property which has benefited by the salvage services, generally the ship, freight, and cargo¹, except the wearing apparel and personal effects of the crew and passengers on board the salvaged vessel², contributes to the salvage reward³. Each part of the salvaged property contributes rateably according to its value, without regard to the degree of risk from which or difficulty with which that part has been salvaged as compared with the rest of the salvaged property⁴, although, where the various interests in the salvaged property have been exposed to different degrees of risk, the court in its discretion may make a separate award in respect of each portion of the salvaged property⁵. The liability to contribute is not limited to the legal ownership of the salvaged property. It falls also on persons who have merely an interest in the salvaged property and whose interest has been saved by means of the salvage service⁶. Contribution is enforceable by or against the Crown as if the Crown were a private person⁷.

1 As to the meaning of 'cargo' for salvage purposes see PARA 926.

2 *The Willem III* (1871) LR 3 A & E 487, 1 Asp MLC 129.

3 *The Fleece* (1850) 3 Wm Rob 278 at 282; *The Fusilier* (1865) Brown & Lush 341 at 352, PC. Where under a charterparty risks of war were taken by the charterers and salvage services were rendered to the vessel exposed to sea and war risks, the charterers were held to be liable for the proportion of the award attributable to war risks: *Pyman Steamship Co v Admiralty Comrs* [1919] 1 KB 49, 14 Asp MLC 364, CA.

4 *The Jonge Bastiaan* (1804) 5 Ch Rob 322; *The Longford* (1881) 6 PD 60, 4 Asp MLC 385 (specie); *The Chateaubriand* [1916] WN 105. See Marvin's *Wreck and Salvage* art 162.

5 *The Velox* [1906] P 263, 10 Asp MLC 277.

6 *The Five Steel Barges* (1890) 15 PD 142, 6 Asp MLC 580; *The Port Victor (Cargo ex)* [1901] P 243, 9 Asp MLC 182, CA; *Holman & Sons Ltd v Merchants' Marine Insurance Co Ltd* [1919] 1 KB 383, 14 Asp MLC 433 (underwriter's proportion); *The Meandros* [1925] P 61, 16 Asp MLC 476.

7 See the Crown Proceedings Act 1947 s 4; and **CROWN PROCEEDINGS AND CROWN PRACTICE**.

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973. Contribution as between cargo owner and shipowner.

Where the salvaged cargo has not been benefited by the salvage services, as happens where the freight exceeds the value of the salvaged cargo¹, or where the services were rendered necessary by an actionable fault on the part of the shipowner or his employees², the cargo owner is entitled to require the shipowner to discharge the whole burden of the salvage reward; and in either of these cases, if the cargo owner has had to pay the shipowner for salvage, he may recover the amount so paid³.

In all other cases the cargo owner is equally liable with the shipowner for payment of the reward, and, if the shipowner pays the cargo owner's share, he has a lien on the cargo for that amount⁴.

1 *Cox v May* (1815) 4 M & S 152. As to the meaning of 'cargo' for salvage purposes see PARA 926.

2 *Prehn v Bailey, The Ettrick* (1881) 6 PD 127, 4 Asp MLC 465, CA. See also *Strang, Steel & Co v A Scott & Co* (1889) 14 App Cas 601 at 608, 6 Asp MLC 419 at 421, PC.

3 *The Princess Royal* (1870) LR 3 A & E 41.

4 *Briggs v Merchant Traders' Ship Loan and Insurance Association* (1849) 13 QB 167; *Cox v May* (1815) 4 M & S 152; *The Geestland* [1980] 1 Lloyd's Rep 628.

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974. Liability proportioned.

Each interest is liable only for its proportionate share of the salvage reward¹, unless the salvors and the master of the salved vessel have entered into a binding salvage agreement fixing the amount of the reward, in which case the shipowner is liable for the whole of the reward due under the agreement².

¹ *The Raisby* (1885) 10 PD 114, 5 Asp MLC 473; *The Mary Pleasants* (1857) Sw 224. See also *The Elton* [1891] P 265, 7 Asp MLC 66. In practice, the shipowner often pays the whole reward in the first instance, protecting himself by security from the cargo owner or relying on his lien on the cargo while it remains in his possession for the cargo owner's proportion: *Hingston v Wendt* (1876) 1 QBD 367, 3 Asp MLC 126; *The Prinz Heinrich* (1888) 13 PD 31 at 34, 6 Asp MLC 273 at 276.

² The liability is both in rem and in personam: *The Cumbrian* (1887) 6 Asp MLC 151; *The Prinz Heinrich* (1888) 13 PD 31, 6 Asp MLC 273.

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975. Life salvage.

For salvage reward for the saving of life¹, the ship, freight and cargo contributed rateably so far as they had been preserved². If the vessel is saved but the cargo is lost, the shipowner is alone liable for payment of a salvage reward. Conversely, if the vessel is lost, but lives and cargo are saved, and no freight is payable, a salvage reward is payable wholly by the cargo owner³.

¹ As to the salvage of persons see the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 16; and PARA 907. As to the relationship between the Salvage Convention and the pre-existing common law see PARA 880.

² See the Merchant Shipping Act 1894 ss 544-546 (repealed).

³ *The Sarpedon (Cargo ex)* (1877) 3 PD 28, 3 Asp MLC 509.

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976. Value of ship.

The value of the ship is her value in her damaged condition on the completion of the salvage service¹. In assessing it, deduction may be made for charges and expenses which have been incurred by the owners in connection with the ship subsequently to the inception of the salvor's interest and which have proved beneficial to that interest².

1 *The Hohenzollern* [1906] P 339, 10 Asp MLC 296; *The Castor* [1932] P 142, 18 Asp MLC 312 (where prospective earnings under an existing charterparty were taken into consideration in assessing the value of the salvaged vessel); *The Kaffir Prince* [1917] P 26. See, however, *The San Onofre* [1917] P 96, 14 Asp MLC 74; *Lady Duncannon (Owners) v Eisenach (Owners)* [1936] 1 All ER 855, 19 Asp MLC 28.

2 *The Selina* (1842) 2 Notes of Cases 18 (crew's wages after service began and bottomry bond taken up by salvors); *The Watt* (1843) 2 Wm Rob 70 (owners unloaded cargo after vessel beached). Deduction was refused in *The Selina*, in respect of crew's wages before salvage service, and in *The Fleece* (1850) 3 Wm Rob 278 in respect of cost of prosecuting wreckers who took forcible possession of the ship.

UPDATE

976 Value of ship

NOTE 1--See also LOF Digest-Update Issue Number 22 (August 2009) pp 2-5.

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977. Cargo.

In assessing the value of cargo¹ an allowance may be made for reasonable and proper expenses of the discharge, storage and sale of the cargo², but not for prepaid freight³, primage⁴ or insurance⁵ or a gratuity to the master of the carrying vessel⁶.

1 As to the meaning of 'cargo' for salvage purposes see PARA 926.

2 This includes custom house charges, weighing, brokerage and commission: *The Peace* (1856) Sw 115 at 116.

3 *The Charlotte Wylie* (1846) 2 Wm Rob 495 at 497; *The Fleece* (1850) 3 Wm Rob 278 at 282.

4 *The Fleece* (1850) 3 Wm Rob 278.

5 *The Fleece* (1850) 3 Wm Rob 278.

6 *The Peace* (1856) Sw 115.

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978. Freight.

Freight which was at risk at the time of the salvage service may be included in the value of the cargo or assessed separately. If the cargo owner has paid a salvage reward in respect of both cargo and freight at risk assessed together and has not paid the freight, he may deduct from the freight when it is payable to the shipowner the amount which he has paid in respect of salvage of freight. If he has paid the freight, he can recover the amount which he has paid in respect of salvage of freight from the shipowner¹.

¹ *The Charlotte Wylie* (1846) 2 Wm Rob 495 at 497; *The Fleece* (1850) 3 Wm Rob 278 at 282. See also *The Westminster* (1841) 1 Wm Rob 229 at 233.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(v) Common Law Provisions relating to Salvage/B. SALVAGE REWARD/(E) Contribution/979. Service ending at port other than port of destination.

979. Service ending at port other than port of destination.

Where the salvage service ends at a place which is not the port of destination and where there is no market for the cargo, and the cargo is carried on to its destination and sold there, the value may be assessed by allowing a pro rata freight to the place where the salvage service ended and deducting from the proceeds of sale a percentage of freight and other charges in respect of the voyage from that place to the port of destination¹. Where under similar circumstances the cargo has not been carried on from the place where the service ended, its value may be assessed at the nearest convenient market, deducting the estimated cost of carriage to that point and the expenses reasonably incident to its sale there².

1 *The George Dean* (1857) Sw 290 at 291.

2 See Kennedy's Law of Salvage (5th Edn) pp 1070, 1071.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(v) Common Law Provisions relating to Salvage/B. SALVAGE REWARD/(E) Contribution/980. Service ending at port of destination.

980. Service ending at port of destination.

Where the salvage service continues until the salvaged vessel reaches the port of destination, the whole net freight unpaid and at risk when the salvage service commenced, and preserved to the shipowner by the service, contributes to the salvage reward¹. Where the salvage service ends at a place other than the port of destination, and the cargo is not carried on to its destination, the following rules govern contribution:

- 1056 (1) if the cargo owner has prevented the shipowner from carrying it on, the whole freight is earned and, therefore, contributes²;
- 1057 (2) if the cargo owner, having a choice, elects to take delivery of the cargo where it is³, the whole⁴ or a pro rata freight⁵, according to the express or implied agreement on delivery, is due to the shipowner and has to be brought into contribution; and
- 1058 (3) if the failure to carry the cargo on is not due to the intervention or election of the cargo owner, no freight is due, and there is, therefore, no freight to contribute.

Where the cargo is carried on to the port of destination from the place where the salvage service ended, the contributory value of the freight is the estimated proportion of the freight in respect of the voyage up to the point where the service ended⁶, less an allowance in respect of the shipowner's expenses incurred in the further transit⁷.

1 It may be valued separately or with the cargo.

2 *The Galam (Cargo ex)* (1863) 33 LJPM & A 97, PC.

3 *Hunter v Prinsep* (1808) 10 East 378; *Vlierboom v Chapman* (1844) 13 M & W 230; *Hopper v Burness* (1876) 1 CPD 137, 3 Asp MLC 149; *Metcalf v Britannia Ironworks Co* (1877) 2 QBD 423, 3 Asp MLC 407, CA.

4 *Christy v Row* (1808) 1 Taunt 300.

5 *The Soblomsten* (1866) LR 1 A & E 293; *Mitchell v Darthez* (1836) 2 Bing NC 555.

6 *The Norma* (1860) Lush 124. This is a departure from the common law doctrine that freight is not apportionable: cf *The Dorothy Foster* (1805) 6 Ch Rob 88.

7 *The Norma* (1860) Lush 124 at 127; *The James Armstrong* (1875) 3 Asp MLC 46 at 49.

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981. Derelict.

In the case of a derelict¹, if the vessel is not taken by the salvors to her port of destination, and her owners have taken no steps to carry the cargo² on, the cargo owner is entitled to delivery of the cargo without payment of any freight³, and in that case there is no freight to contribute.

Recovery of the derelict by the shipowner at the port of discharge, after the cargo owner has exercised his right of treating the abandonment of the ship as a determination of the contract of carriage, does not revive the contract of carriage, and no freight is due from the cargo owner⁴.

1 As to the meaning of 'derelict' see PARA 987.

2 As to the meaning of 'cargo' for salvage purposes see PARA 926.

3 *The Kathleen* (1874) LR 4 A & E 269, 2 Asp MLC 367; *The Cito* (1881) 7 PD 5, 4 Asp MLC 468, CA. If the cargo owner has applied for delivery at the port of refuge and offered bail for its value, and by order of the court the ship has been taken to the port of destination, there is no pro rata freight due in respect of carriage to the port of refuge, and the cargo owner is not liable for the expenses either of carriage thence to the port of destination or of delivery there: see Kennedy's Law of Salvage (5th Edn) p 1092, citing *The Argonaut* (1883) unreported, CA. See also *Bradley v H Newson, Sons & Co* [1919] AC 16, 14 Asp MLC 340, HL.

4 *The Arno* (1895) 8 Asp MLC 5, CA.

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982. Finality of salvage award.

Once made, a salvage award is generally final. If, after an award has been made, it is found that a miscalculation has been made as to the values, the court has power to reopen and readjust its award¹, but the power is exercised with great caution².

1 *The James Armstrong* (1875) LR 4 A & E 380, 3 Asp MLC 46 (where the cargo owner contributed upon the value of the cargo without deducting freight due on delivery and the freight was assessed too low).

2 *The Georg* [1894] P 330, 7 Asp MLC 476 (where readjustment claimed on the ground that the selling price of the salvaged property proved lower than the assessed value was refused).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(vi) Lloyd's Standard Form of Salvage Agreement/983. Purpose of the Lloyd's Standard Form of Salvage Agreement.

(vi) Lloyd's Standard Form of Salvage Agreement

983. Purpose of the Lloyd's Standard Form of Salvage Agreement.

The Lloyd's Standard Form of Salvage Agreement, also known as 'Lloyd's Open Form' ('LOF')¹, is a widely used salvage contract, which allows all parties to sign up to terms while a vessel is in jeopardy so that salvage services can be rendered promptly². The contract for the performance of salvage services undertaken on these terms incorporates Lloyd's Standard Salvage and Arbitration Clauses (the 'LSSA Clauses')³, providing a framework for the collection of security to protect a salvor's claim and arbitration machinery to determine the contractors' remuneration or special compensation (or both) in the event that salvors and the owners of the salvaged vessel cannot agree on the payment for successful services⁴. LOF 2000 makes special provision allowing parties to decide whether the 'Scopic clause'⁵ forms part of the agreement, thereby providing an alternative regime for the determination of claims for special compensation under the International Salvage Convention 1989⁶ that would otherwise be dealt with under Lloyd's Open Form arbitration⁷.

1 The latest version of LOF, which is approved and published by the Council of Lloyd's, is dated 1 September 2000 ('LOF 2000'). At the date at which this volume states the law, this version was available at: http://www.lloyds.com/Lloyds_Worldwide/Lloyds_Agents/Salvage_Arbitration_Branch/Lloyds_Open_Form_LOF.htm. Predecessor versions of the form were dated 15 January 1908, 3 December 1924, 13 October 1926, 12 April 1950, 10 June 1953, 20 December 1967, 23 February 1972, 21 May 1980, 5 September 1990 and 1 January 1995. An authoritative commentary on LOF 2000 is published in John Reeder (ed) *Brice on Maritime Law of Salvage* (4th Edn, 2003) Ch 8 (see pp 539-614).

2 As to whether the Lloyd's Standard Form of Salvage Agreement is a contract of the utmost good faith (ie *uberrimae fidei*) requiring a full pre-contract disclosure of facts see the LOF Digest-Update Issue Number 7 (July 2004) p 4 (referring to LOF 2000). As to the LOF Digest-Update see note 4.

3 See PARA 985. At the date at which this volume states the law, the latest version of the LSSA Clauses, which are approved and published by the Council of Lloyd's, was dated 1 September 2000 and was available at: http://www.lloyds.com/Lloyds_Worldwide/Lloyds_Agents/Salvage_Arbitration_Branch/Lloyds_Open_Form_LOF.htm.

4 Procedural Rules for the arbitration process described in the text are approved and published by the Council of Lloyd's pursuant to LOF 2000 Clause I (as to which see PARA 984): see PARA 985. At the date at which this volume states the law, the latest version of the Procedural Rules was dated 1 September 2000 and was available at: http://www.lloyds.com/Lloyds_Worldwide/Lloyds_Agents/Salvage_Arbitration_Branch/Lloyds_Open_Form_LOF.htm. Lloyd's plays no part in the arbitration that arises under LOF but it retains the services of a panel of experienced arbitrators to hear cases arising thereunder. Lloyd's also records the cumulative effect of notable arbitral decisions made under LOF, in the form of the LOF Digest (4th Edn, 2001), and at regular intervals it publishes loose-leaf updates to the LOF Digest (the 'LOF Digest-Update'). The current edition of the LOF Digest refers only to those predecessor versions of LOF dated 21 May 1980 ('LOF 1980'), 5 September 1990 ('LOF 1990') and 1 January 1995 ('LOF 1995'), so the effect of arbitral decisions arising out of LOF 2000 is recorded currently in the LOF Digest-Update only.

5 Ie the Special Compensation Protection and Indemnity Club ('SCOPIC') clause (as to which see PARA 986).

6 Ie the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) (as to which see PARA 8), which has effect under the Merchant Shipping Act 1995 s 224 (as to which see PARAS 879, 891 et seq). As to special compensation see PARA 905.

7 See PARA 986. Accordingly, remuneration under the Scopic clause is outside the ambit of the Lloyd's Open Form arbitration process, although any dispute arising out of the Scopic clause or the operations thereunder is referred to arbitration as provided for under the Lloyd's Open Form agreement: see PARA 986.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(vi) Lloyd's Standard Form of Salvage Agreement/984. Lloyd's Open Form (LOF) 2000.

984. Lloyd's Open Form (LOF) 2000.

LOF 2000¹ is a standard form of salvage agreement which requires the following details to be supplied:

- 1059 (1) the name of the salvage contractors²;
- 1060 (2) the property to be salvaged³;
- 1061 (3) an agreed place of safety⁴;
- 1062 (4) the agreed currency of any arbitral award and security (if other than United States dollars)⁵;
- 1063 (5) the date of the agreement⁶;
- 1064 (6) the place of agreement⁷;
- 1065 (7) whether the 'Scopic clause'⁸ is incorporated into the agreement⁹;
- 1066 (8) the name of the person signing for and on behalf of the contractors (and his signature)¹⁰;
- 1067 (9) the name of the captain or other person signing for and on behalf of the property (and his signature)¹¹.

The contractors' basic obligation arising from a duly completed LOF 2000 form is stated to be that the contractors identified in head (1) above thereby agree to use their best endeavours¹² to save the property specified in head (2) above and to take the property to the place stated in head (3) above (or to such other place as may thereafter be agreed)¹³. While performing the salvage services the contractors must also use their best endeavours to prevent or minimise damage to the environment¹⁴.

Subject to the provisions of the International Salvage Convention 1989¹⁵ relating to special compensation¹⁶, and to the Scopic clause if incorporated, the contractors' services must be rendered and accepted as salvage services upon the principle of 'No Cure, No Pay'¹⁷. The contractors' services are deemed to have been performed when the property is in a safe condition in the place of safety stated in head (3) above (or as otherwise agreed or determined)¹⁸.

The contractors' remuneration or special compensation (or both) is determined by arbitration in London in the manner prescribed by Lloyds Standard Salvage and Arbitration Clauses¹⁹ and Lloyds Procedural Rules²⁰. LOF arbitrators will apply the criteria for fixing the salvage reward provided by the International Salvage Convention 1989²¹ when assessing the quantum of the award together with principles of the English law of salvage which are not inconsistent with that Convention²². Factors affecting quantum include the value of the ship (including proper deductions that may be made to that value), the value of any cargo (including proper deductions that may be made to that value), and the value of any freight at risk²³. 'Out of pocket' expenses properly incurred by the salvor may be recognised in quantum²⁴, along with post-termination services²⁵.

Both the agreement and any arbitration thereunder are governed by English law²⁶.

¹ ie the latest version of the Lloyd's Standard Form of Salvage Agreement, also known as 'Lloyd's Open Form' ('LOF'), which was approved and published by the Council of Lloyd's and dated 1 September 2000: see PARA 983.

2 See LOF 2000 Box 1. The persons named in head (1) in the text are referred to in the agreement as the 'contractors': see LOF 2000 Box 1. As to the designation of the salvage contractors see the LOF Digest (4th Edn, 2001) p 7 (referring to LOF 1980); and see the LOF Digest-Update Issue Number 12 (July 2006) p 2, Issue Number 18 (December 2007) p 4. As to predecessor versions of LOF, the LOF Digest and the LOF Digest-Update see PARA 983 notes 1, 4.

3 See LOF 2000 Box 2. The property specified in head (2) in the text is referred to in the agreement as 'the property': see LOF 2000 Box 2. The form allows the vessel to be specified along with her cargo freight bunkers stores and any other property thereon but excluding the personal effects or baggage of passengers master or crew: see LOF 2000 Box 2. As to cargo and freight (and their owners) see the LOF Digest (4th Edn, 2001) pp 7-9 (referring to LOF 1980), p 45 (referring to LOF 1990). As to cargo interests and sovereign immunity see the LOF Digest-Update Issue Number 17 (September 2007) pp 1-2.

As to the duties of property owners regarding co-operation with the contractors see LOF 2000 Clause F; and the LOF Digest (4th Edn, 2001) pp 16-17 (referring to LOF 1980), pp 63-64, 97 (referring to LOF 1990). As to remedies available for a breach of LOF 2000 Clause F see the LOF Digest-Update Issue Number 6 (March 2004) pp 1-4.

As soon as possible, the owners of the vessel should notify the owners of other property on board that the agreement under LOF 2000 has been made: see LOF 2000 Important Notice 1.

4 See LOF 2000 Box 3. As to 'a place of safety' see the LOF Digest (4th Edn, 2001) pp 11-12 (referring to LOF 1980); and the LOF Digest-Update Issue Number 18 (December 2007) p 4.

5 See LOF 2000 Box 4.

6 See LOF 2000 Box 5. Any salvage services rendered by the contractors to the property before and up to the date of this agreement are deemed to be covered by the agreement: see LOF 2000 Clause E. See the LOF Digest-Update Issue Number 11 (June 2006) pp 2-3.

7 See LOF 2000 Box 6.

8 Ie the Special Compensation Protection and Indemnity Club ('SCOPIC') clause (as to which see PARA 986).

9 See LOF 2000 Box 7. The inclusion of the Scopic clause is provided for in the alternative on LOF 2000 (ie 'Yes/No'): see LOF 2000 Box 7. Unless the word 'No' has been deleted, the agreement is deemed to have been made on the basis that the Scopic clause is not incorporated and forms no part of the agreement; but the deletion of the word 'No' does not of itself constitute notice that the Scopic clause has been invoked within the meaning of the Scopic clause para 3: see LOF 2000 Clause C.

10 See LOF 2000 Box 8. No person signing the agreement or any party on whose behalf it is signed may at any time or in any manner whatsoever offer provide make give or promise to provide or demand or take any form of inducement for entering into the agreement: see LOF 2000 Clause L.

11 See LOF 2000 Box 9. The master or other person signing the agreement on behalf of the property identified in head (2) in the text enters into the agreement as agent for the respective owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof: see LOF 2000 Clause K. See also note 10. As to the status of parties to the agreement see the LOF Digest (4th Edn, 2001) p 30 (referring to LOF 1980). See also the LOF Digest-Update Issue Number 3 (July 2003) pp 1-2, Issue Number 4 (October 2003) pp 1-2, Issue Number 9 (November 2004) pp 3-4, Issue Number 18 (December 2007) p 5 (referring to LOF 2000).

12 As to 'best endeavours' see the LOF Digest (4th Edn, 2001) pp 10-11 (referring to LOF 1980); and the LOF Digest-Update Issue Number 7 (July 2004) pp 4-5, Issue Number 10 (April 2005) pp 1-2 (referring to LOF 2000).

13 See LOF 2000 Clause A. If no place is specified under head (3) in the text, and in the absence of any subsequent agreement as to the place where the property is to be taken, the contractors' obligation becomes to take the property to a place of safety: see LOF 2000 Clause A. As to contractors' obligations see the LOF Digest (4th Edn, 2001) pp 46-54 (referring to LOF 1990); and the LOF Digest-Update Issue Number 18 (December 2007) pp 2-4.

14 See LOF 2000 Clause B. As to environmental factors see the LOF Digest (4th Edn, 2001) pp 60-62 (referring to LOF 1990); and the LOF Digest-Update Issue Number 18 (December 2007) pp 1-2. See also the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 13 (criteria for fixing the reward); and PARA 904. As to the International Convention on Salvage 1989 generally see note 15.

15 Ie the International Convention on Salvage 1989 (as to which see PARA 8), which has effect under the Merchant Shipping Act 1995 s 224 (as to which see PARAS 879, 891 et seq).

16 As to special compensation see PARA 905. As to the criteria for fixing special compensation in accordance with the International Salvage Convention 1989 art 14 (as to which see PARA 905) see the LOF Digest (4th Edn, 2001) pp 70-96 (referring to LOF 1990); and see the LOF Digest-Update Issue Number 8 (October 2004) p 3.

17 See LOF 2000 Clause D. Any salvage remuneration to which the contractors become entitled is not to be diminished by reason of the exception to the principle of 'No Cure, No Pay' in the form of special compensation or remuneration payable to the contractors under a Scopic clause: see LOF 2000 Clause D. As to the effect on a salvage award of a Scopic clause see the LOF Digest-Update Issue Number 7 (July 2004) p 2 (referring to LOF 2000).

When there is no longer any reasonable prospect of a useful result leading to a salvage reward in accordance with the International Salvage Convention 1989 art 12 (conditions for reward) (see PARA 903) and/or art 13 (criteria for fixing the reward) (see PARA 904) either the owners of the vessel or the contractors are entitled to terminate the services under the agreement by giving reasonable prior written notice to the other: see LOF 2000 Clause G. As to 'services rendered and accepted as salvage services' see the LOF Digest (4th Edn, 2001) p 12 (referring to LOF 1980). As to the criteria for fixing the salvage reward in accordance with the International Salvage Convention 1989 see the LOF Digest (4th Edn, 2001) pp 65-69, 104-105 (referring to LOF 1990).

18 See LOF 2000 Clause H. The text refers to a place of safety otherwise determined in accordance with LOF 2000 Clause A (as to which see the text and notes 12-13): see LOF 2000 Clause H. See also the LOF Digest-Update Issue Number 4 (October 2003) p 4 (referring to LOF 2000).

19 As to the Lloyds Standard Salvage and Arbitration Clauses (the 'LSSA clauses') see PARA 985.

20 See LOF 2000 Clause I. The provisions of the LSSA Clauses and Lloyds Procedural Rules are deemed to be incorporated in the agreement and form an integral part thereof; and any other difference arising out of the agreement or the operations thereunder must be referred to arbitration in the same way: see LOF 2000 Clause I. As to the Lloyds Procedural Rules see PARA 985. As to 'any other difference arising out of the agreement or the operations thereunder' see the LOF Digest (4th Edn, 2001) pp 14-15 (referring to LOF 1980). As to arbitration see further p 55 (referring to LOF 1990).

If the contractors are successful, the owners of other property which is on board the vessel (see note 3) should note that it will become necessary to provide the contractors with salvage security promptly in accordance with LSSA Clause 4 (referred to in LOF 2000 Clause I); and the provision of general average security does not relieve the salvaged interests of their separate obligation to provide salvage security to the contractors: see LOF 2000 Important Notice 1.

As to the general level of awards see the LOF Digest-Update Issue Number 19 (April 2008) pp 2-4. As to the assessment in arbitration awards of the worth of salvage services see the LOF Digest-Update Issue Number 5 (January 2004) pp 1-4, Issue Number 9 (November 2004) pp 5-6, Issue Number 17 (September 2007) pp 5-7, Issue Number 19 (April 2008) pp 4-6 (referring to LOF 2000).

21 In the International Salvage Convention 1989 art 13 (as to which see PARA 904).

22 As to the law that applies to salvage generally see PARA 876 et seq. As to the application of the 'disparity principle' in appeal awards (which states that in salvage cases where there is only immobilisation, there exists no great urgency and only straightforward towage is required to effect a cure, it is important that the sum awarded should not be wholly out of line with commercial towage rates, the 'disparity' being discerned between these commercial terms on offer and the recognition in the award under LOF of the services performed) see the LOF Digest-Update Issue Number 4 (October 2003) pp 3-4, Issue Number 8 (October 2004) pp 3-4 (referring to LOF 2000). As to whether the 'disparity principle' is seriously flawed see the LOF Digest-Update Issue Number 19 (April 2008) pp 1-2; and *Owners of the vessel 'Voutakos' v Tsavlis Salvage (International) Ltd* [2008] EWHC 1581 (Admlty), [2008] All ER (D) 143 (Jul) (the 'disparity principle' is not realistic: it was not possible to identify precisely 'straightforward' rescue towage cases; and commercial rates were admissible and relevant but their significance would depend on the facts of each case; the court's role was to take account of all circumstances in assessing the award, and ensure that the award was not out of all proportion to the services rendered or to the values of the property salvaged). As to the standard of proof required generally to establish whether a casualty is exposed to a given danger see the LOF Digest-Update Issue Number 15 (June 2007) p 5.

23 See the LOF Digest (4th Edn, 2001) pp 136-147, 154-176. See also the LOF Digest-Update Issue Number 1 (March 2003) pp 1-4, Issue Number 6 (March 2004) pp 5-6, Issue Number 7 (July 2004) pp 1-3, Issue Number 11 (June 2006) pp 2, 4-5, Issue Number 12 (July 2006) pp 3, 5-6, Issue Number 13 (September 2006) pp 2-5, Issue Number 14 (March 2007) p 3, Issue Number 18 (December 2007) p 5 (referring to LOF 2000). As to recognition of a salvor's willingness to work in a war zone (and as to what constitutes such a zone) see the LOF Digest-Update Issue Number 12 (July 2006) pp 1-2.

24 See the LOF Digest (4th Edn, 2001) pp 148-151; and the LOF Digest-Update Issue Number 8 (October 2004) pp 1-3, Issue Number 15 (June 2007) pp 1-4.

25 See the LOF Digest (4th Edn, 2001) pp 152-153.

26 See LOF 2000 Clause J. As to the law governing arbitration see the LOF Digest (4th Edn, 2001) pp 56-58 (referring to LOF 1990), p 132 (referring to LOF 1995).

UPDATE

984 Lloyd's Open Form (LOF) 2000

NOTE 4--See also LOF Digest-Update Issue Number 20 (September 2008) pp 1, 2.

NOTE 20--See also LOF Digest-Update Issue Number 22 (August 2009) pp 7, 8.

NOTE 22--*The Voutakos*, cited, reported at [2009] 1 All ER (Comm) 1067. See also LOF Digest-Update Issue Number 21 (May 2009) pp 1-7.

NOTE 23--As to the value of the ship, see LOF Digest-Update Issue Number 22 (August 2009) pp 1-5.

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985. Lloyd's Standard Salvage and Arbitration Clauses (the 'LSSA Clauses') and Lloyds Procedural Rules.

Under LOF 2000¹, the contractors' remuneration or special compensation² (or both) is determined by arbitration in London in the manner prescribed by the Lloyd's Standard Salvage and Arbitration Clauses (the 'LSSA Clauses')³ and Lloyds Procedural Rules⁴.

The LSSA Clauses, which are incorporated into and form an integral part of every contract for the performance of salvage services undertaken on the terms of LOF 2000 (the 'agreement'), make provision with regard to:

- 1068 (1) the overriding objective to be borne in mind when construing the agreement or on the making of any arbitral award or order⁵;
- 1069 (2) salvage security, maritime lien and the right to arrest the property salvaged⁶;
- 1070 (3) the conditions attaching to the appointment of an arbitrator by the Council of Lloyd's⁷;
- 1071 (4) the arbitration procedure and arbitrators' powers⁸;
- 1072 (5) the representation of parties in arbitration⁹;
- 1073 (6) the contractors' right to interest on sums awarded in respect of remuneration or special compensation¹⁰;
- 1074 (7) the consideration of currency correction with regard to any award or appeal award¹¹;
- 1075 (8) the procedure relating to appeals and cross appeals¹²;
- 1076 (9) the payment of sums due from the parties¹³;
- 1077 (10) the status of Lloyd's documents and publications¹⁴;
- 1078 (11) the status and authority of the contractors' personnel and subcontractors¹⁵;
- 1079 (12) disputes that arise under the Scopic clause¹⁶.

The Lloyds Procedural Rules¹⁷ make provision with regard to:

- 1080 (a) the arbitrators' powers¹⁸;
- 1081 (b) the requirement to convene a preliminary meeting with the represented parties for the purpose of giving directions as to the manner in which the arbitration is to be conducted¹⁹;
- 1082 (c) the subject-matter of the initial order for directions²⁰;
- 1083 (d) the classes of document which may be disclosed²¹;
- 1084 (e) the conditions under which expert evidence may be adduced²²;
- 1085 (f) the arbitrator's need to ensure that the represented parties are informed of the benefit which might be derived from the use of mediation²³;
- 1086 (g) the date to be fixed for the hearing of an arbitration²⁴;
- 1087 (h) the procedure relating to appeals²⁵.

The Fixed Cost Arbitration Procedure ('FCAP') may apply in cases (either on the introduction of arbitration under LOF 2000 or on appeal under the LSSA Clauses) where the amount of the salvaged fund is small or where no point of law arises and the facts are uncomplicated²⁶. FCAP

aims to limit the recoverable costs of obtaining an award and proceeds on the basis of documents alone²⁷. Any award published in accordance with FCAP falls under the appeal provisions contained in the LSSA Clauses and any such appeal will usually be conducted on a documents-only basis with fixed costs²⁸.

1 le the latest version of the Lloyd's Standard Form of Salvage Agreement, also known as 'Lloyd's Open Form' ('LOF'), which was approved and published by the Council of Lloyd's and dated 1 September 2000: see PARA 983.

2 As to which see note 10.

3 As to the Lloyds Standard Salvage and Arbitration Clauses (the 'LSSA clauses') see heads (1) to (12) in the text.

4 See LOF 2000 Clause I; and PARA 984. As to the Lloyds Procedural Rules see heads (a) to (h) in the text.

5 See LSSA Clause 2. For these purposes, 'award' includes an interim or provisional award: see LSSA Clause 3.1.

6 See LSSA Clause 4. As to the security required by the contractor see the LOF Digest (4th Edn, 2001) pp 18-19, 22, 26-27 (referring to LOF 1980), pp 98-99 (referring to LOF 1990); and as to whether a contractor's failure to comply with the obligation to inform cargo interests of the amount of security required affects the right to recover costs and expenses see the LOF Digest-Update Issue Number 17 (September 2007) pp 2-4. As to protection of the contractor's lien see pp 20-22 (referring to LOF 1980), pp 100-103 (referring to LOF 1990). As to predecessor versions of LOF, and as to the LOF Digest and the LOF Digest-Update see PARA 983 notes 1, 4.

7 See LSSA Clause 5.

8 See LSSA Clause 6. As to the arbitrator's power to make an interim award see the LOF Digest (4th Edn, 2001) pp 23-24 (referring to LOF 1980), pp 110-111 (referring to LOF 1990), pp 133-135 (referring to LOF 1995). As to the arbitrator's power to award contractors' expenses see the LOF Digest-Update Issue Number 12 (July 2006) pp 4-5, Issue Number 17 (September 2007) pp 7-8 (referring to LOF 2000). As to guidance on the conduct of arbitrations given by the appeal arbitrator see the LOF Digest-Update Issue Number 15 (June 2007) pp 4-5.

9 See LSSA Clause 7. As to awards against unrepresented interests see the LOF Digest-Update Issue Number 7 (July 2004) p 3 (referring to LOF 2000).

10 See LSSA Clause 8. For these purposes, 'special compensation' refers to the compensation payable to salvors under the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 14 (as to which see PARA 905), which has effect under the Merchant Shipping Act 1995 s 224 (as to which see PARAS 879, 891 et seq): see LSSA Clauses 3.3, 3.8.

As to the accepted principles governing the exercise of the authority to award interest under LSSA Clause 8 see LOF Digest-Update Issue Number 4 (October 2003) p 5 (referring to LOF 2000). As to the sums upon which interest may be payable see the LOF Digest (4th Edn, 2001) p 28 (referring to LOF 1980); and as to the time from which interest runs see the LOF Digest (4th Edn, 2001) pp 116-119 (referring to LOF 1990), pp 177-178 (referring to LOF 1980). See also the LOF Digest-Update Issue Number 2 (June 2003) pp 1-2 (referring to LOF 2000).

11 See LSSA Clause 9. For these purposes, 'appeal award' means any award including any interim or provisional award made by the Appeal Arbitrator appointed under Clause 10.2 (see head (8) in the text): see Clause 3.1. As to currency correction see the LOF Digest (4th Edn, 2001) pp 31-34 (referring to LOF 1980), pp 123-125 (referring to LOF 1990); and see the LOF Digest-Update Issue Number 6 (March 2004) p 6 (referring to LOF 2000).

12 See LSSA Clause 10. As to the appeal arbitrator's powers see the LOF Digest (4th Edn, 2001) pp 121-122 (referring to LOF 1990). As to notice of appeal see the LOF Digest (4th Edn, 2001) p 120 (referring to LOF 1990). As to leave to appeal from an arbitrator's interim award see the LOF Digest (4th Edn, 2001) p 29 (referring to LOF 1980); and as to the principles to be applied in an appeal on quantum only see the LOF Digest-Update Issue Number 6 (March 2004) p 4 (referring to LOF 2000). As to guidance given by the appeal arbitrator on the principles to be followed where a party seeks to introduce new evidence on appeal see the LOF Digest-Update Issue Number 17 (September 2007) p 5.

13 See LSSA Clause 11.

14 See LSSA Clauses 12, 15.

15 See LSSA Clause 13. As to the arrangements to be made where a contractor is claiming both in the name of and on behalf of sub-contractors' servants or agents see the LOF Digest (4th Edn, 2001) pp 35-36 (referring to LOF 1980).

16 See LSSA Clause 14. For these purposes, the 'Scopic clause' refers to the agreement made between: (1) members of the International Salvage Union; (2) the International Group of Protection and Indemnity Clubs; and (3) certain property underwriters which first became effective on 1 August 1999 and includes any replacement or revision thereof (as to which see PARA 986): see Clause 3.9.

17 The Lloyds Procedural Rules are made pursuant to LOF 2000 Clause I: see PARA 984.

18 In addition to all powers conferred on the arbitrators by the Arbitration Act 1996 (or any amendment thereof) (as to which see **ARBITRATION**): see Procedural Rule 1. As to the arbitrator's power to call for, receive or act upon evidence see the LOF Digest (4th Edn, 2001) pp 25-24 (referring to LOF 1980), pp 106-110 (referring to LOF 1990), the LOF Digest-Update Issue Number 11 (June 2006) pp 1-2.

As to the arbitrator's power to make orders as to costs etc see the LOF Digest (4th Edn, 2001) pp 112-115 (referring to LOF 1990), p 135 (referring to LOF 1995); and as to legal costs generally see pp 179-184. As to the principles on which costs should be awarded on the indemnity basis see the LOF Digest-Update Issue Number 9 (November 2004) p 5. As to the time within which offers of settlement should be made see the LOF Digest-Update Issue Number 3 (July 2003) p 5, Issue Number 10 (April 2005) pp 2-4; and as to open offers see the LOF Digest-Update Issue Number 9 (November 2004) pp 1-3. As to appeals made in relation to offers of settlement see the LOF Digest-Update Issue Number 10 (April 2005) pp 4-5.

19 See Procedural Rule 2. The arbitrator may dispense with the requirement for a preliminary meeting if the represented parties agree a consent order for directions which the arbitrator is willing to approve: see Procedural Rule 2.

20 See Procedural Rule 3.

21 See Procedural Rule 4. The classes of document referred to in head (d) in the text include those relevant to the proof of out of pocket expenses (as to which see PARA 984): see Procedural Rule 4.

22 See Procedural Rule 5. As to the principles underlying the expert's task in LOF arbitration see LOF Digest-Update Issue Number 4 (October 2003) p 5 (referring to LOF 2000).

23 See Procedural Rule 6.

24 See Procedural Rule 7.

25 See Procedural Rule 8.

26 See the Lloyd's Panel of Salvage Arbitrators' Guidelines for Fixed Cost Arbitration Procedure on Documents Alone (LOF-FCAP2005). At the date at which this volume states the law, the latest version of LOF-FCAP2005 was dated 3 May 2005 and was available at: http://www.lloyds.com/Lloyds_Worldwide/Lloyds_Agents/Salvage_Arbitration_Branch/Fixed_Cost_Arbitration_Procedure_FCAP.htm. Under this procedure, the fees of the arbitrator, the charges of the Salvage Arbitration Branch of Lloyd's and the party and party costs may not exceed the fixed amounts as published by Lloyd's, and any party in whose favour an order for costs is made has its recoverable costs capped at a published level (excluding the Arbitrator and Salvage Arbitration Branch of Lloyd's costs plus any other costs not within the scope of the FCAP): see LOF-FCAP2005 para 10. As to guidance issued by the salvage arbitrator for the benefit of parties using the FCAP procedure see the LOF Digest-Update Issue Number 13 (September 2006) pp 1-2.

27 See LOF-FCAP2005 Introduction.

28 As to the appeal provisions contained in the LSSA Clauses see head (8) in the text.

UPDATE

985 Lloyd's Standard Salvage and Arbitration Clauses (the 'LSSA Clauses') and Lloyds Procedural Rules

NOTE 6--As to the salvor's obligations see the LOF Digest-Update Issue Number 20 (September 2008) p 2.

NOTE 10--As to the calculation of interest see also the LOF Digest-Update Issue Number 20 (September 2008) p 4.

NOTE 18--As to the award of costs to co-contractors, see LOF Digest-Update Issue Number 22 (August 2009) pp 6, 7.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(1) SALVAGE/(vi) Lloyd's Standard Form of Salvage Agreement/986. The Scopic clause.

986. The Scopic clause.

Although special compensation is available to salvors under the International Salvage Convention 1989¹, the 'Scopic clause'² was formulated to calculate a contractor's special compensation on the basis of a tariff together with an uplift fixed at 25 per cent³. If the Scopic clause is invoked, its provisions are supplementary to any Lloyd's Form Salvage Agreement⁴, except that the method of assessing special compensation⁵ is substituted by the method of assessment set out in the Scopic clause⁶. The Scopic clause consists of sub-clauses which make particular provision with regard to:

- 1088 (1) invoking the Scopic clause⁷;
- 1089 (2) the provision of security for Scopic remuneration⁸;
- 1090 (3) the contractor's right to withdraw on the owners' failure to provide security under head (2) above⁹;
- 1091 (4) the tariff rates applicable to Scopic remuneration¹⁰;
- 1092 (5) the award of salvage under the International Salvage Convention 1989¹¹;
- 1093 (6) the discount to be applied to the award mentioned in head (5) above if (before currency adjustment and before interest and costs) it is greater than the assessed Scopic remuneration¹²;
- 1094 (7) the date for, and form of, payment of any Scopic remuneration¹³;
- 1095 (8) the entitlement of either party to terminate their obligations under the Scopic clause if certain conditions are met¹⁴;
- 1096 (9) the duties and liabilities of the contractor¹⁵;
- 1097 (10) the interaction between the Scopic clause and the International Salvage Convention 1989 provisions regarding the effect of a salvor's misconduct¹⁶;
- 1098 (11) the right of the owners to appoint a Special Casualty Representative ('SCR')¹⁷;
- 1099 (12) the right of Underwriters of the Hull and Machinery and of any cargo on board to appoint Special Representatives (called respectively the 'Special Hull Representative' and the 'Special Cargo Representative' and collectively called the 'Special Representatives')¹⁸;
- 1100 (13) the extent to which the assessment of SCOPIC remuneration should include efforts made to prevent or to remove pollution¹⁹;
- 1101 (14) the relationship between SCOPIC remuneration and general average²⁰;
- 1102 (15) disputes arising out of the Scopic clause or the operations thereunder²¹.

1 See under the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 14: see PARA 905. The International Convention on Salvage 1989 has effect under the Merchant Shipping Act 1995 s 224: see PARAS 879, 891 et seq.

2 The latest version of the Scopic clause is known as 'SCOPIC 2007' and, at the date at which this volume states the law, was available at: http://www.lloyds.com/Lloyds_Worldwide/Lloyds_Agents/Salvage_Arbitration_Branch/SCOPIC.htm. An authoritative commentary on SCOPIC is published in John Reeder (ed) *Brice on Maritime Law of Salvage* (4th Edn, 2003) Ch 8 (see pp 614-632).

3 The salvage services under the Lloyd's Standard Form of Salvage Agreement (the 'main agreement') continue to be assessed in accordance with the International Convention on Salvage 1989 art 13 (as to which see PARA 904), even if the contractor has invoked the Scopic clause: see SCOPIC 2007 sub-clause 6(i). However,

SCOPIC remuneration as assessed under SCOPIC 2007 sub-clause 5 (see head (4) in the text) will be payable only by the owners of the vessel and only to the extent that it exceeds the total award under the International Convention on Salvage 1989 art 13 (or, if none, any potential art 13 award) payable by all salvaged interests (including cargo, bunkers, lubricating oil and stores) before currency adjustment and before interest and costs even if the art 13 award or any part of it is not recovered: see SCOPIC 2007 sub-clause 6(i). Awards under the International Convention on Salvage 1989 art 13 are discounted by 25% of the amount by which any such award exceeds the remuneration calculated under the Scopic clause: see SCOPIC 2007 sub-clause 7; and head (6) in the text.

As to the latest version of the Lloyd's Standard Form of Salvage Agreement, also known as 'Lloyd's Open Form', which was approved and published by the Council of Lloyd's and dated 1 September 2000 ('LOF 2000'), see PARA 983. LOF 2000 makes provision for the invocation of SCOPIC 2007, subject to the agreement of both parties: see PARA 983. Statistics published by Lloyd's indicate that the clause is invoked in approximately 20% of cases in which LOF 2000 has been used.

4 The definitions in the Lloyd's Standard Form of Salvage Agreement (the 'main agreement') are incorporated into the Scopic clause but if the Scopic clause is inconsistent with any provisions of the main agreement (or inconsistent with the law applicable), the Scopic clause, once invoked under sub-clause 2 (see head (1) in the text), overrides such other provisions to the extent necessary to give business efficacy to the agreement: see SCOPIC 2007 sub-clause 1.

5 Ie being, under LOF 2000, the method which is provided for under the International Convention on Salvage 1989 art 14(1)-(4) (as to which see PARA 905): see SCOPIC 2007 sub-clause 1.

6 Accordingly, if the Scopic clause has been incorporated into the main agreement (ie the agreement provided for by LOF 2000), the contractor may make no claim pursuant to International Convention on Salvage 1989 art 14 (as to which see PARA 905) except in the circumstances described in SCOPIC 2007 sub-clause 4 (withdrawal) (see head (3) in the text): see SCOPIC 2007 sub-clause 1.

7 See SCOPIC 2007 sub-clause 2.

8 See SCOPIC 2007 sub-clause 3.

9 See SCOPIC 2007 sub-clause 4.

10 See SCOPIC 2007 sub-clause 5. As to tariff rates see also SCOPIC 2007 Appendix A. SCOPIC remuneration under head (4) in the text requires consideration of 'out of pocket' expenses; and as to what is considered reasonable in this context see the LOF Digest-Update Issue Number 16 (July 2007) pp 1-6. As to the LOF Digest-Update see PARA 983 note 4.

11 See SCOPIC 2007 sub-clause 6. Head (5) in the text refers to the award for salvage services which, even if the Scopic clause is invoked, continues to be assessed in accordance with the International Convention on Salvage 1989 art 13 (as to which see PARA 904): see SCOPIC 2007 sub-clause 6(i); and note 3.

12 See SCOPIC 2007 sub-clause 7. See also the LOF Digest-Update Issue Number 6 (March 2004) pp 6-7.

13 See SCOPIC 2007 sub-clause 8. As to the status of legal expenses incurred in formulating a claim under the Scopic Clause see the LOF Digest-Update Issue Number 14 (March 2007) pp 1-2.

14 See SCOPIC 2007 sub-clause 9.

15 See SCOPIC 2007 sub-clause 10.

16 See SCOPIC 2007 sub-clause 11. The provisions referred to in the text are those contained in the International Convention on Salvage 1989 art 18 (as to which see PARA 909): see SCOPIC 2007 sub-clause 11.

17 See SCOPIC 2007 sub-clause 12. As to the appointment of SCRs, which are selected from a panel (the 'SCR Panel') appointed by a Committee (the 'SCR Committee'), see SCOPIC 2007 Appendix B.

18 See SCOPIC 2007 sub-clause 13. As to the Special Representatives see also SCOPIC 2007 Appendix C.

19 See SCOPIC 2007 sub-clause 14.

20 See SCOPIC 2007 sub-clause 15.

21 See SCOPIC 2007 sub-clause 16. Any dispute arising out of the Scopic clause or the operations thereunder are referred to arbitration as provided for under the Lloyd's Standard Form of Salvage Agreement (the 'main agreement'): see SCOPIC 2007 sub-clause 16.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(2) WRECK/(i) In general/987. Meaning of 'wreck' and 'derelict'.

(2) WRECK

(i) In general

987. Meaning of 'wreck' and 'derelict'.

'Wreck' may be defined as property cast ashore within the ebb and flow of the tide after shipwreck¹; and the property must be a ship, her cargo or a portion of it². Jetsam, flotsam and lagan or ligam³ are not wreck at common law so long as they remain in or upon the sea, but, if they are cast up on the shore, they become wreck⁴.

For the purposes of the statutory provisions relating to salvage and wreck⁵, however, 'wreck' includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water⁶. The intention of so extending the meaning of 'wreck' was evidently to bring under one term the rights which pertained to the land and those which constituted droits of Admiralty⁷. Fishing boats or fishing gear lost or abandoned at sea and either found or taken possession of within United Kingdom waters⁸ or found or taken possession of beyond those waters and brought within those waters are treated as wreck for the purposes of the statutory provisions relating to salvage and wreck⁹; and 'wreck' includes any hovercraft¹⁰ or any part of it or its cargo found sunk, stranded or abandoned in or on any navigable water¹¹ or on or over the foreshore or place where the tide normally ebbs or flows¹².

'Derelict' is property, whether vessel or cargo¹³, abandoned at sea by those in charge of it without hope on their part of recovering or intention of returning to it¹⁴. A vessel is not derelict which is only left temporarily by her master and crew with the intention of returning to her¹⁵, even though the management of the vessel may have passed into the hands of salvors¹⁶. A vessel deserted by her master and crew with the intention of abandoning her does not, however, cease to be derelict because they subsequently change their intention and try to recover her¹⁷. Whenever the question arises whether a vessel is derelict or not, the test to be applied is the intention and expectation of the master and crew at the time of quitting her, and, in the absence of direct evidence, that is determined by consideration of all the circumstances of the case¹⁸.

1 *le wreckum maris significat illa bona quae naufragio ad terram appelluntur*: see *Sir Henry Constable's Case* (1601) 5 Co Rep 106a. See further **CROWN PROPERTY** vol 12(1) (Reissue) PARA 270 et seq. A raft of timber is not a wreck (*Nicholson v Chapman* (1793) 2 Hy Bl 254), nor are planks of timber moored in a river which have broken adrift (*Palmer v Rouse* (1858) 3 H & N 505), nor a gas buoy which has become adrift (*Wells v Gas Float Whittin No 2 (Owners)* [1897] AC 337, 8 Asp MLC 272, HL), none having formed part of a vessel, her apparel or cargo. See also *The Schiller (Cargo ex)* (1877) 2 PD 145 at 147, 3 Asp MLC 439 at 441, CA.

2 *Palmer v Rouse* (1858) 3 H & N 505. As to the meaning of 'cargo' for salvage purposes see PARA 926.

3 'Flotsam' is where a ship is wrecked and the goods float on the sea; 'jetsam' where they are cast into the sea in order to lighten the ship and sink; and 'ligan' where they are cast into the sea attached to a buoy to mark the spot; and in all cases it is necessary that the ship should perish: see *Sir Henry Constable's Case* (1601) 5 Co Rep 106a; *The Gas Float Whittin No 2* [1896] P 42 at 51, CA (on appeal sub nom *Wells v Gas Float Whittin No 2 (Owners)* [1897] AC 337, HL).

4 *Sir Henry Constable's Case* (1601) 5 Co Rep 106a; *R v Two Casks of Tallow* (1837) 3 Hag Adm 294 at 298; *The Pauline* (1845) 2 Wm Rob 358.

5 *le in the Merchant Shipping Act 1995 Pt IX (ss 224-255) (see PARAS 884 et seq, 988 et seq): see s 255(1).*

6 Merchant Shipping Act 1995 s 255(1). For these purposes, 'tidal water' means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides, and not being a harbour: s 255(1). As to the meaning of 'harbour' see PARA 49 note 5. As to the common law meaning of 'wreck' in relation to the provisions for wages of seamen on termination of service by wreck or loss of the ship see PARA 464 note 2.

7 As to droits of Admiralty see PARA 139.

8 As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

9 See the Merchant Shipping Act 1995 s 255(2). The purposes referred to in the text are those of Pt IX (see PARAS 884 et seq, 988 et seq): see s 255(1).

10 As to the meaning of 'hovercraft' see PARA 381.

11 For these purposes, 'navigable water' means any water which is in fact navigable by ships or vessels, whether or not the tide ebbs and flows there, and whether or not there is a public right of navigation in that water: Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 3(1).

12 See the Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 8(1); Interpretation Act 1978 s 17(2)(b). This extended meaning of 'wreck' does not, however, apply to the claims of any admiral, vice-admiral, lord of the manor, or any person other than Her Majesty and her royal successors to unclaimed wreck for his own use: see the Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 8(1); Interpretation Act 1978 s 17(2)(b).

13 *R v Property Derelict* (1825) 1 Hag Adm 383; *R v Forty Nine Casks of Brandy* (1836) 3 Hag Adm 257 at 270; *The Samuel* (1851) 15 Jur 407 at 410; *The Coromandel* (1857) Sw 205; *The Boiler ex Elephant* (1891) 64 LT 543, CA.

14 *The Aquila* (1798) 1 Ch Rob 37 at 40; *The Gertrude* (1861) 30 LJPM & A 130 at 131; *Cossman v West, Cossman v British America Assurance Co* (1887) 13 App Cas 160 at 180, 181, 6 Asp MLC 233 at 239, PC; *The Carrie* [1917] P 224, 14 Asp MLC 321; *Bradley v H Newsom, Sons & Co* [1919] AC 16, 14 Asp MLC 340, HL.

15 *The Aquila* (1798) 1 Ch Rob 37; *The Lepanto* [1892] P 122, 7 Asp MLC 192.

16 *Cossman v West, Cossman v British America Assurance Co* (1887) 13 App Cas 160, 6 Asp MLC 233, PC; *The Lepanto* [1892] P 122, 7 Asp MLC 192.

17 *The Sarah Bell* (1845) 4 Notes of Cases 144 at 146.

18 See eg *The John and Jane* (1802) 4 Ch Rob 216; *The Cosmopolitan* (1848) 6 Notes of Cases, Supp xvii, xx-xxvii; *The Pickwick* (1852) 16 Jur 669 at 670; *The Zeta* (1875) LR 4 A & E 460, 3 Asp MLC 73; *The American Farmer* (1947) 80 Ll L Rep 672.

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988. Secretary of State's functions as to wreck; appointment of receiver of wreck.

The Secretary of State¹ has the general superintendence throughout the United Kingdom² of all matters relating to wreck³.

The Secretary of State may, with the consent of the Treasury⁴, appoint one or more persons to be receiver of wreck for the purposes of the statutory provisions relating to salvage and wreck⁵, and a receiver so appointed must discharge such functions as are assigned to him by the Secretary of State⁶.

Such public notice of appointments to the office of receiver must be given as appears to the Secretary of State to be appropriate⁷.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping Act 1995 s 248(1). As to the meaning of 'wreck' see PARA 987.

4 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 Ie for the purposes of the Merchant Shipping Act 1995 Pt IX (ss 224-255) (see PARAS 884 et seq, 989 et seq): see s 248(2).

6 Merchant Shipping Act 1995 s 248(2).

7 Merchant Shipping Act 1995 s 248(3).

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989. Expenses and fees of receivers.

There must be paid to the receiver¹ the expenses properly incurred by him in the discharge of his functions and also, in respect of such matters as may be prescribed by regulations made by the Secretary of State², such fees as may be so prescribed³; but the receiver is not entitled to any other remuneration⁴.

The receiver has, in addition to all other rights and remedies for the recovery of those expenses and fees, the same rights and remedies in respect of those expenses and fees as a salvor⁵ has in respect of salvage⁶ due to him⁷.

Whenever any dispute arises as to the amount payable to the receiver in respect of expenses or fees, that dispute must be determined by the Secretary of State whose decision is final⁸.

1 As to the meaning of 'receiver' see PARA 884 note 4.

2 As to the Secretary of State see PARA 38; and as to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.

3 Merchant Shipping Act 1995 s 249(1). At the date at which this volume states the law, no such regulations had been made and none have effect as if so made.

4 Merchant Shipping Act 1995 s 249(2).

5 As to the meaning of 'salvor' see PARA 883 note 4.

6 As to the meaning of 'salvage' see PARA 883.

7 Merchant Shipping Act 1995 s 249(3).

8 Merchant Shipping Act 1995 s 249(4).

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990. Remuneration for services of coastguard.

Where services are rendered by any officers or men of the coastguard service¹ in watching or protecting shipwrecked property, the owner of the property must pay in respect of those services remuneration according to a scale fixed by the Secretary of State². The scale fixed by the Secretary of State must not exceed the scale by which remuneration to officers and men of the coastguard for extra duties in the ordinary service of the Commissioners of Revenue and Customs³ is for the time being regulated⁴.

Such remuneration⁵:

- 1103 (1) is recoverable by the same means⁶;
- 1104 (2) must be paid to the same persons⁷; and
- 1105 (3) must be accounted for and applied in the same manner⁸,

as fees received by the receiver⁹ relating to fees to be paid to him in the discharge of his functions¹⁰.

However, no liability in respect of those services so arises¹¹ where: (a) the services have been declined by the owner of the property or his agent at the time they were tendered¹²; or (b) salvage¹³ has been claimed and awarded for the services¹⁴.

1 As to Her Majesty's Coastguard see PARA 57.

2 Merchant Shipping Act 1995 s 250(1). As to the Secretary of State see PARA 38; and as to the Secretary of State's power to appoint committees for the purpose of advising him when considering the making or alteration of any scales see PARA 41.

3 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 900-933.

4 Merchant Shipping Act 1995 s 250(4) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)).

5 I.e remuneration under the Merchant Shipping Act 1995 s 250: see s 250(3).

6 Merchant Shipping Act 1995 s 250(3)(a).

7 Merchant Shipping Act 1995 s 250(3)(b).

8 Merchant Shipping Act 1995 s 250(3)(c).

9 I.e under the Merchant Shipping Act 1995 s 249 (see PARA 989): see s 250(3). As to the meaning of 'receiver' see PARA 884 note 4.

10 Merchant Shipping Act 1995 s 250(3).

11 I.e under the Merchant Shipping Act 1995 s 250(1) (see the text and notes 1-2): see s 250(2).

12 Merchant Shipping Act 1995 s 250(2)(a).

13 As to the meaning of 'salvage' see PARA 883.

14 Merchant Shipping Act 1995 s 250(2)(b).

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991. Preservation of Cinque ports' jurisdiction in relation to wreck.

Nothing in the Merchant Shipping Act 1995 provisions relating to salvage and wreck¹ prejudices or affects any jurisdiction or powers of Lord Warden or any officers of the Cinque ports² or of any court of those ports or of any court having concurrent jurisdiction within the boundaries of those ports³.

1 In the Merchant Shipping Act 1995 Pt IX (ss 224-255) (see PARAS 884 et seq, 992 et seq): see s 314(3), Sch 14 para 11.

2 As to the boundaries of the jurisdiction of the Lord Warden of the Cinque ports see the Cinque Ports Act 1821 s 18; and PARA 210. As to the Court of Admiralty of the Cinque Ports, and as to the Cinque Ports Salvage Commissioners, see PARA 210.

3 Merchant Shipping Act 1995 Sch 14 para 11.

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(ii) Vessels in Distress

992. Application of and discharge of functions.

The statutory provisions relating to vessels in distress¹ apply in circumstances where a United Kingdom² or foreign³ vessel⁴ is wrecked, stranded or in distress at any place on or near the coasts⁵ of the United Kingdom⁶ or any tidal water⁷ within United Kingdom waters⁸.

Where any function is conferred on the receiver⁹ by any of those provisions, that function may be discharged by any officer of Revenue and Customs or any principal officer of the coastguard¹⁰. An officer discharging any such functions of the receiver is to be treated, with respect to any goods or articles belonging to a vessel the delivery of which to the receiver is required by any of the statutory provisions relating to wreck¹¹, as the agent of the receiver¹². However, an officer discharging such functions is not: (1) entitled to any fees payable to receivers¹³; or (2) deprived of any right to salvage¹⁴ to which he would otherwise be entitled¹⁵.

1 Ie the Merchant Shipping Act 1995 s 232 (see PARA 993), s 233 (see PARA 994), s 234 (see PARA 995) and s 235 (see PARA 996): see s 231(1).

2 As to the meaning of 'United Kingdom ship' see PARA 230.

3 As to the meaning of 'foreign', in relation to a ship, see PARA 19 note 2.

4 As to the meaning of 'vessel' see PARA 885 note 5.

5 As to the meaning of 'on or near the coast' see *The Fulham* [1898] P 206 at 213, 8 Asp MLC 425 at 426, 427 (on appeal [1899] P 251, 8 Asp MLC 559, CA).

6 As to the meaning of 'United Kingdom' see PARA 17 note 3.

7 As to the meaning of 'tidal water' see PARA 987 note 6.

8 Merchant Shipping Act 1995 s 231(1). As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

9 As to the meaning of 'receiver' see PARA 884 note 4.

10 Merchant Shipping Act 1995 s 231(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). As to Her Majesty's Coastguard see PARA 57. As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

11 Ie the Merchant Shipping Act 1995 Pt IX Ch II (ss 231-247) (see PARAS 884 et seq, 993 et seq): see s 231(3). As to the meaning of 'wreck' see PARA 987.

12 Merchant Shipping Act 1995 s 231(3).

13 Merchant Shipping Act 1995 s 231(4)(a).

14 As to the meaning of 'salvage' see PARA 883.

15 Merchant Shipping Act 1995 s 231(4)(b).

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993. Duty of receiver where vessel in distress.

In circumstances where the statutory provisions relating to vessels in distress apply in relation to any vessel¹, the receiver² must, on being informed of the circumstances, discharge the following functions³, namely:

- 1106 (1) forthwith proceed to the place where the vessel is⁴;
- 1107 (2) take command of all persons present⁵; and
- 1108 (3) assign such duties and give such directions to each person as he thinks fit for the preservation of the vessel and of the lives of the shipwrecked persons⁶.

However, in doing so, the receiver must not interfere between the master⁷ and crew of the vessel in reference to the management of the vessel unless he is requested to do so by the master⁸.

If any person intentionally disobeys the direction of the receiver, he is liable to a fine⁹.

1 le where the Merchant Shipping Act 1995 s 232 applies by virtue of s 231 (see PARA 992): see s 232(1). As to the meaning of 'vessel' see PARA 885 note 5.

2 As to the meaning of 'receiver' see PARA 884 note 4.

3 Merchant Shipping Act 1995 s 232(1).

4 Merchant Shipping Act 1995 s 232(2)(a).

5 Merchant Shipping Act 1995 s 232(2)(b).

6 Merchant Shipping Act 1995 s 232(2)(c). For these purposes, 'shipwrecked persons', in relation to a vessel, means persons belonging to the vessel: s 231(5).

7 As to the meaning of 'master' see PARA 424.

8 Merchant Shipping Act 1995 s 232(3). Heads (1) to (3) in the text are subject to s 232(3): see s 232(2) (amended by the Merchant Shipping and Maritime Security Act 1997 s 29(1), Sch 6 para 14).

9 See the Merchant Shipping Act 1995 s 232(4); and PARA 1220.

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994. Powers of receiver in case of vessel in distress.

In circumstances where the statutory provisions relating to vessels in distress apply in relation to any vessel¹, the receiver² may, for the purpose of the preservation of shipwrecked persons³ or of the vessel, cargo and equipment⁴:

- 1109 (1) require such persons as he thinks necessary to assist him⁵;
- 1110 (2) require the master⁶, or other person having the charge, of any vessel near at hand to give such assistance with his men, or vessel, as may be in his power⁷; and
- 1111 (3) require the use of any vehicle that may be near at hand⁸.

If any person refuses without reasonable excuse to comply with any requirement so made, he is liable to a fine⁹.

1 In the case where the Merchant Shipping Act 1995 s 233 applies by virtue of s 231 (see PARA 992): see s 233(1). As to the meaning of 'vessel' see PARA 885 note 5.

2 As to the meaning of 'receiver' see PARA 884 note 4.

3 As to the meaning of 'shipwrecked persons' see PARA 993 note 6.

4 Merchant Shipping Act 1995 s 233(1) (amended by the Merchant Shipping and Maritime Security Act 1997 s 21(1)). As to the meaning of 'cargo' for salvage purposes see PARA 926.

The Merchant Shipping Act 1995 s 233(1) is subject to s 233(1A): see s 233(1) (as so amended). Accordingly, the receiver may not under s 233(1) impose any requirement on the master or other person having the charge of a vessel owned or operated by the Royal National Lifeboat Institution: s 233(1A) (added by the Merchant Shipping and Maritime Security Act 1997 s 21(2)).

5 Merchant Shipping Act 1995 s 233(1)(a). See note 4.

6 As to the meaning of 'master' see PARA 424.

7 Merchant Shipping Act 1995 s 233(1)(b). See note 4.

8 Merchant Shipping Act 1995 s 233(1)(c). See note 4.

9 See the Merchant Shipping Act 1995 s 233(2); and PARA 1221.

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995. Power to use adjoining land in case of vessel in distress.

In circumstances where the statutory provisions relating to vessels in distress apply in relation to any vessel¹, all persons may, for the purpose of²:

- 1112 (1) rendering assistance to the vessel³;
- 1113 (2) saving the lives of shipwrecked persons⁴; or
- 1114 (3) saving the cargo or equipment of the vessel⁵,

pass and repass over any adjoining land without being subject to interruption by the owner or occupier and deposit on the land any cargo or other article recovered from the vessel⁶. The right of passage so conferred⁷ is a right of passage with or without vehicles⁸; but no right of passage is so conferred⁹ where there is some public road equally convenient¹⁰.

The rights so conferred¹¹ must be so exercised as to do as little damage as possible¹²; and any damage sustained by an owner or occupier of land in consequence of the exercise of such rights is a charge on the vessel, cargo or articles in respect of or by which the damage is caused¹³. Any amount payable in respect of such damage must, in case of dispute, be determined and is, in default of payment, recoverable in the same manner as the amount of salvage¹⁴ is determined and recoverable under the statutory provisions relating to salvage and wreck¹⁵.

If the owner or occupier of any land:

- 1115 (a) impedes or hinders any person in the exercise of the rights so conferred¹⁶;
- 1116 (b) impedes or hinders the deposit on the land of any cargo or other article recovered from the vessel¹⁷; or
- 1117 (c) prevents or attempts to prevent any cargo or other article recovered from the vessel from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit¹⁸,

he is liable to a fine¹⁹.

1 le where the Merchant Shipping Act 1995 s 234 applies by virtue of s 231 (see PARA 992): see s 234(1). As to the meaning of 'vessel' see PARA 885 note 5.

2 Merchant Shipping Act 1995 s 234(1).

3 Merchant Shipping Act 1995 s 234(1)(a).

4 Merchant Shipping Act 1995 s 234(1)(b). As to the meaning of 'shipwrecked persons' see PARA 993 note 6.

5 Merchant Shipping Act 1995 s 234(1)(c). As to the meaning of 'cargo' for salvage purposes see PARA 926.

6 Merchant Shipping Act 1995 s 234(1).

7 le by the Merchant Shipping Act 1995 s 234(1) (see the text and notes 1-6): see s 234(2).

8 Merchant Shipping Act 1995 s 234(2).

- 9 le by the Merchant Shipping Act 1995 s 234(1) (see the text and notes 1-6): see s 234(3).
- 10 Merchant Shipping Act 1995 s 234(3).
- 11 le by the Merchant Shipping Act 1995 s 234(1) (see the text and notes 1-6): see s 234(4).
- 12 Merchant Shipping Act 1995 s 234(4).
- 13 Merchant Shipping Act 1995 s 234(5).
- 14 As to the meaning of 'salvage' see PARA 883.
- 15 Merchant Shipping Act 1995 s 234(6). The text refers to the provisions of Pt XI (ss 224-255) (see PARAS 884 et seq, 996 et seq): see s 234(6).
- 16 See the Merchant Shipping Act 1995 s 234(7)(a); and PARA 1222. The text refers to the rights conferred by s 234: see s 234(7)(a); and PARA 1222.
- 17 See the Merchant Shipping Act 1995 s 234(7)(b); and PARA 1222.
- 18 See the Merchant Shipping Act 1995 s 234(7)(c); and PARA 1222.
- 19 See the Merchant Shipping Act 1995 s 234(7); and PARA 1222.

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996. Liability for damage in case of plundered vessel.

In circumstances where the statutory provisions relating to vessels in distress apply in relation to any vessel¹, and the vessel or any part of its cargo² and equipment is plundered, damaged or destroyed by persons in circumstances in which those persons commit the offence of riot³, compensation must be made to the owner of the vessel, cargo or equipment⁴. In England and Wales⁵, such compensation must be made by the compensation authority in the manner provided by the Riot (Damages) Act 1886⁶ with respect to claims for compensation under that Act⁷. Where the vessel, cargo or equipment is not within a police area, the plundering, damage or destruction is to be treated⁸ as taking place within the nearest police area⁹.

1 le where the Merchant Shipping Act 1995 s 235 applies by virtue of s 231 (see PARA 992): see s 235(1). As to the meaning of 'vessel' see PARA 885 note 5.

2 As to the meaning of 'cargo' for salvage purposes see PARA 926.

3 As to the offence of riot see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 555.

4 Merchant Shipping Act 1995 s 235(1).

5 As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

6 As to compensation under the Riot (Damages) Act 1886 for damage by riot see **POLICE** vol 36(1) (2007 Reissue) PARAS 173-177. The compensation authority under the Riot (Damages) Act 1886 is, in relation to any police area, the police authority: see **POLICE** vol 36(1) (2007 Reissue) PARA 173. As to police authorities in police areas under the Police Act 1996 see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq.

7 Merchant Shipping Act 1995 s 235(2).

8 le for the purposes of the Merchant Shipping Act 1995 s 235(2) (see the text and notes 5-7): see s 235(3).

9 Merchant Shipping Act 1995 s 235(3).

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(iii) Dealing with Wreck

997. Duties of finder etc of wreck.

If any person finds or takes possession of any wreck¹ in United Kingdom waters², or finds or takes possession of any wreck outside United Kingdom waters and brings it within those waters, he must³:

1118 (1) if he is the owner of it, give notice to the receiver⁴ stating that he has found or taken possession of it and describing the marks by which it may be recognised⁵;

1119 (2) if he is not the owner of it, give notice to the receiver that he has found or taken possession of it and, as directed by the receiver, either hold it to the receiver's order or deliver it to the receiver⁶.

If any person fails without reasonable excuse so to comply⁷, he is liable on summary conviction to a fine⁸.

1 As to the meaning of 'wreck' see PARA 987.

2 As to the meaning of 'United Kingdom waters' see PARA 48 note 10. As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping Act 1995 s 236(1). Section 236 is directed towards a criminal and improper detention by which it is sought to practise a fraud upon the Crown or the owner and not towards salvors who have restored the property to the owners: *The Zeta* (1875) LR 4 A & E 460, 3 Asp MLC 73. It does not apply to salvors who remain in possession for the safety of the vessel (*The Glynoeron* (1905) 21 TLR 648) or to a person who takes possession of a stranded vessel under the bona fide belief that it is his property by purchase or otherwise (*The Liffey* (1887) 58 LT 351, 6 Asp MLC 255).

4 As to the meaning of 'receiver' see PARA 884 note 4. As to the giving of notices under the Merchant Shipping Act 1995 see PARA 73.

5 Merchant Shipping Act 1995 s 236(1)(a).

6 Merchant Shipping Act 1995 s 236(1)(b).

7 He to comply with the Merchant Shipping Act 1995 s 236(1) (see the text and notes 1-6): see s 236(2); and PARA 1223.

8 See the Merchant Shipping Act 1995 s 236(2); and PARA 1223. Such a person as is mentioned in the text, if he is not the owner of the wreck, is liable also to civil penalties and the forfeit of salvage rights under s 236: see s 236(2); and PARA 1223.

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998. Receiver to give notice of wreck.

Where the receiver¹ takes possession of any wreck², he must, within 48 hours³:

- 1120 (1) make a record describing the wreck and any marks by which it is distinguished⁴; and
- 1121 (2) if, in his opinion, the value of the wreck exceeds £5,000, also transmit a similar description to the chief executive officer of Lloyd's in London⁵.

The record made by the receiver under head (1) above must be kept by him available for inspection by any person during reasonable hours without charge⁶; and the notice sent under head (2) above to the chief executive officer of Lloyd's must be posted by him in some conspicuous position for inspection⁷.

1 As to the meaning of 'receiver' see PARA 884 note 4.

2 As to the meaning of 'wreck' see PARA 987.

3 Merchant Shipping Act 1995 s 238(1).

4 Merchant Shipping Act 1995 s 238(1)(a).

5 Merchant Shipping Act 1995 s 238(1)(b).

6 Merchant Shipping Act 1995 s 238(2).

7 Merchant Shipping Act 1995 s 238(3).

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999. Claims of owners to wreck.

The owner of any wreck¹ in the possession of the receiver² who establishes his claim to the wreck to the satisfaction of the receiver within one year from the time when the wreck came into the receiver's possession is, on paying the salvage³, fees and expenses due, entitled to have the wreck delivered or the proceeds of sale paid to him⁴.

Where:

1122 (1) a foreign ship⁵ has been wrecked on or near the coasts⁶ of the United Kingdom⁷; or

1123 (2) any articles belonging to or forming part of or of the cargo⁸ of a foreign ship which has been wrecked on or near the coasts of the United Kingdom are found on or near the coast or are brought into any port⁹,

the appropriate consular officer¹⁰ is to be treated, in the absence of the owner and of the master¹¹ or other agent of the owner, as the agent of the owner for the purposes of the custody and disposal of the wreck and such articles¹².

1 As to the meaning of 'wreck' see PARA 987.

2 As to the meaning of 'receiver' see PARA 884 note 4.

3 As to the meaning of 'salvage' see PARA 883.

4 Merchant Shipping Act 1995 s 239(1).

5 As to the meaning of 'ship' see PARA 229; and as to the meaning of 'foreign', in relation to a ship, see PARA 19 note 2.

6 As to the meaning of 'on or near the coast' see *The Fulham* [1898] P 206 at 213, 8 Asp MLC 425 at 426-427 (on appeal [1899] P 251, 8 Asp MLC 559, CA).

7 Merchant Shipping Act 1995 s 239(2)(a). As to the meaning of 'United Kingdom' see PARA 17 note 3.

8 As to the meaning of 'cargo' for salvage purposes see PARA 926.

9 Merchant Shipping Act 1995 s 239(2)(b). As to the meaning of 'port' see PARA 46 note 12.

10 For these purposes, 'appropriate consular officer', in relation to a foreign ship, means the consul general of the country to which the ship or, as the case may be, the owners of the cargo may have belonged or any consular officer of that country authorised for the purpose by any treaty or arrangement with that country: Merchant Shipping Act 1995 s 239(3). As to the meaning of 'consular officer' for these purposes see PARA 48 note 11.

11 As to the meaning of 'master' see PARA 424.

12 Merchant Shipping Act 1995 s 239(2).

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1000. Immediate sale of wreck in certain cases.

The receiver¹ may at any time sell any wreck² in his possession if, in his opinion³:

- 1124 (1) it is under the value of £5,000⁴;
- 1125 (2) it is so much damaged or of so perishable a nature that it cannot with advantage be kept⁵; or
- 1126 (3) it is not of sufficient value to pay for storage⁶.

The receiver may also sell any wreck in his possession before the end of the year, calculated from the time when the wreck came into his possession⁷, if⁸:

- 1127 (a) in his opinion it is unlikely that any owner will establish a claim to the wreck within that year⁹; and
- 1128 (b) no statement has been given to the receiver¹⁰ in relation to the place where the wreck was found¹¹.

The proceeds of sale must, after defraying the expenses of the sale, be held by the receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold¹². However, where the receiver sells any wreck in a case falling within heads (a) and (b) above, he may make to the salvors an advance payment, of such amount as he thinks fit and subject to such conditions as he thinks fit, on account of any salvage that may become payable to them upon direction by the Secretary of State¹³ in accordance with the provisions relating to the disposal of unclaimed wrecks¹⁴.

1 As to the meaning of 'receiver' see PARA 884 note 4.

2 As to the meaning of 'wreck' see PARA 987.

3 Merchant Shipping Act 1995 s 240(1).

4 Merchant Shipping Act 1995 s 240(1)(a).

5 Merchant Shipping Act 1995 s 240(1)(b).

6 Merchant Shipping Act 1995 s 240(1)(c).

7 I.e. the year referred to in the Merchant Shipping Act 1995 239(1) (see PARA 999): see s 240(1A) (added by the Merchant Shipping and Maritime Security Act 1997 s 22(1), (2)).

8 Merchant Shipping Act 1995 s 240(1A) (as added: see note 7).

9 Merchant Shipping Act 1995 s 240(1A)(a) (as added: see note 7).

10 I.e. under the Merchant Shipping Act 1995 s 242(1) (see PARA 1004): see s 240(1A)(b) (as added: see note 7).

11 Merchant Shipping Act 1995 s 240(1A)(b) (as added: see note 7).

12 Merchant Shipping Act 1995 s 240(2) (amended by the Merchant Shipping and Maritime Security Act 1997 s 22(1), (3)).

13 As to the Secretary of State see PARA 38.

14 Merchant Shipping Act 1995 s 240(3) (added by the Merchant Shipping and Maritime Security Act 1997 s 22(1), (3)). The text refers to payments that may become payable in accordance with the Merchant Shipping Act 1995 s 243(5) (see PARA 1005): see s 240(3) (as so added).

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1001. Provisions as respect cargo etc washed on shore or otherwise lost or taken.

Where a vessel¹ is wrecked, stranded, or in distress at any place on or near the coasts² of the United Kingdom³ or any tidal water⁴ within United Kingdom waters⁵, any cargo⁶ or other articles belonging to or separated from the vessel which are washed on shore or otherwise lost or taken from the vessel must be delivered to the receiver⁷.

If any person, whether the owner or not: (1) conceals or keeps possession of any such cargo or article⁸; or (2) refuses to deliver any such cargo or article to the receiver or to any person authorised by the receiver to require delivery⁹, he is liable on summary conviction to a fine¹⁰; and the receiver or any person authorised by him may take any such cargo or article, if necessary by force, from any person who refuses to deliver it¹¹.

1 As to the meaning of 'vessel' see PARA 885 note 5.

2 As to the meaning of 'on or near the coast' see *The Fulham* [1898] P 206 at 213, 8 Asp MLC 425 at 426, 427 (on appeal [1899] P 251, 8 Asp MLC 559, CA).

3 As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 As to the meaning of 'tidal water' see PARA 987 note 6.

5 As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

6 As to the meaning of 'cargo' for salvage purposes see PARA 926.

7 Merchant Shipping Act 1995 s 237(1). As to the meaning of 'receiver' see PARA 884 note 4.

8 See the Merchant Shipping Act 1995 s 237(2)(a); and PARA 1224.

9 See the Merchant Shipping Act 1995 s 237(2)(b); and PARA 1224.

10 See the Merchant Shipping Act 1995 s 237(2); and PARA 1224.

11 See the Merchant Shipping Act 1995 s 237(3); and PARA 1224.

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1002. Revenue and Customs' release of goods saved from stranded or wrecked ship.

The Commissioners for Revenue and Customs¹ must, subject to taking security for the protection of the revenue in respect of the goods²:

- 1129 (1) permit all goods saved from any ship³ stranded or wrecked on its homeward voyage to be forwarded to the port⁴ of its original destination⁵; and
1130 (2) permit all goods saved from any ship stranded or wrecked on her outward voyage to be returned to the port at which they were shipped⁶.

¹ As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 900-933.

² For these purposes, 'goods' includes wares and merchandise: Merchant Shipping Act 1995 s 251(3).

³ As to the meaning of 'ship' see PARA 229.

⁴ As to the meaning of 'port' see PARA 46 note 12.

⁵ See the Merchant Shipping Act 1995 s 251(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)).

⁶ See the Merchant Shipping Act 1995 s 251(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)).

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(iv) Unclaimed Wreck

1003. Right of Crown to unclaimed wreck.

Her Majesty and Her Royal successors are entitled to all unclaimed wreck¹ found in the United Kingdom² or in United Kingdom waters³ except in places where Her Majesty or any of Her Royal predecessors has granted the right to any other person⁴.

1 As to the meaning of 'wreck' see PARA 987.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

4 Merchant Shipping Act 1995 s 241.

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1004. Notice of unclaimed wreck to be given to persons entitled.

Any person who is entitled to unclaimed wreck¹ found at any place in the United Kingdom² or in United Kingdom waters³ must give the receiver⁴ a statement containing the particulars of his entitlement and specifying an address to which notices may be sent⁵.

Where a statement has been so given to the receiver and the entitlement is proved to the satisfaction of the receiver, the receiver must, on taking possession of any wreck found at a place to which the statement refers, within 48 hours, send to the specified address a description of the wreck and of any marks distinguishing it⁶.

1 As to the meaning of 'wreck' see PARA 987. As to the right of the Crown to unclaimed wreck see PARA 1003.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

4 As to the meaning of 'receiver' see PARA 884 note 4.

5 Merchant Shipping Act 1995 s 242(1).

6 Merchant Shipping Act 1995 s 242(2).

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1005. Disposal of unclaimed wreck.

Where, as respects any wreck¹ found in the United Kingdom² or in United Kingdom waters³ and in the possession of the receiver⁴, no owner establishes a claim to it within one year after it came into the receiver's possession, the wreck must be dealt with in the following way⁵.

If the wreck is claimed by any person who has delivered the required statement⁶ and has proved to the satisfaction of the receiver his entitlement to receive unclaimed wreck found at the place where the wreck was found, the wreck must, on payment of all expenses, costs, fees and salvage⁷ due in respect of it, be delivered to that person⁸.

If the wreck is not duly claimed by any person⁹, the receiver must sell the wreck and pay the proceeds as directed under heads (a) to (c) below¹⁰, after making the required deductions¹¹, being:

- 1131 (1) the expenses of the sale¹²;
- 1132 (2) any other expenses incurred by the receiver¹³; and
- 1133 (3) his fees¹⁴,

and paying to the salvors¹⁵ the amount of salvage¹⁶ such as the Secretary of State directs generally or in the particular case¹⁷.

The proceeds of sale, after making those deductions and salvage payments, must be paid by the receiver for the benefit of Her Majesty¹⁸:

- 1134 (a) if the wreck is claimed in right of the Duchy of Lancaster¹⁹, to the receiver-general of the duchy or his deputies as part of its revenues²⁰;
- 1135 (b) if the wreck is claimed in right of the Duchy of Cornwall²¹, to the receiver-general of the duchy or his deputies as part of its revenues²²; and
- 1136 (c) in any other case, into the Consolidated Fund²³.

1 As to the meaning of 'wreck' see PARA 987.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

4 As to the meaning of 'receiver' see PARA 884 note 4.

5 See the Merchant Shipping Act 1995 s 243(1). As to the right of the Crown to unclaimed wreck see PARA 1003.

6 I.e. the statement required by the Merchant Shipping Act 1995 s 242 (see PARA 1004): see s 243(2).

7 As to the meaning of 'salvage' see PARA 883.

8 Merchant Shipping Act 1995 s 243(2).

9 I.e. in accordance with the Merchant Shipping Act 1995 s 242 (see PARA 1004): see s 243(3).

10 I.e. as directed by the Merchant Shipping Act 1995 s 243(6) (see heads (a) to (c) in the text): see s 243(3).

11 le the deductions required by the Merchant Shipping Act 1995 s 243(4) (see heads (1) to (3) in the text): see s 243(3).

12 Merchant Shipping Act 1995 s 243(4)(a).

13 Merchant Shipping Act 1995 s 243(4)(b).

14 Merchant Shipping Act 1995 s 243(4)(c).

15 As to the meaning of 'salvor' see PARA 883 note 4.

16 le the amount of salvage determined under the Merchant Shipping Act 1995 s 243(5) (see the text and note 17): see s 243(3).

17 Merchant Shipping Act 1995 s 243(5). As to the Secretary of State see PARA 38; and as to the Secretary of State's power to give directions see PARA 41.

18 Merchant Shipping Act 1995 s 243(6).

19 As to the Duchy of Lancaster see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-317.

20 Merchant Shipping Act 1995 s 243(6)(a).

21 As to the Duchy of Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 318-353.

22 Merchant Shipping Act 1995 s 243(6)(b).

23 Merchant Shipping Act 1995 s 243(6)(c).

As to payments to be made into the Consolidated Fund under the Merchant Shipping Act 1995 see PARA 63. As to the Consolidated Fund generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

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1006. Effect of delivery of wreck etc.

Delivery of wreck¹ or payment of the proceeds of sale of wreck by the receiver² discharges the receiver from all liability in respect of the delivery or payment³.

Delivery of wreck by the receiver⁴ does not, however, prejudice or affect any question which may be raised by third parties concerning the right or title to the wreck or concerning the title to the soil of the place at which the wreck was found⁵.

1 As to the meaning of 'wreck' see PARA 987.

2 Ie under the Merchant Shipping Act 1995 Pt IX Ch II (ss 231-247) (see PARAS 992 et seq, 1007 et seq): see s 244(1). As to the meaning of 'receiver' see PARA 884 note 4.

3 Merchant Shipping Act 1995 s 244(1).

4 Ie under the Merchant Shipping Act 1995 Pt IX Ch II (see PARAS 992 et seq, 1007 et seq): see s 244(2).

5 Merchant Shipping Act 1995 s 244(2).

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(v) Receiver's Powers of Entry etc

1007. In general.

Where the receiver¹ has reason to believe that:

- 1137 (1) any wreck² is being concealed by or is in the possession of some person who is not the owner of it³; or
- 1138 (2) any wreck is being otherwise improperly dealt with⁴,

he may apply to a justice of the peace for a search warrant⁵.

Where a search warrant is so granted to the receiver, the receiver may, by virtue of the warrant⁶:

- 1139 (a) enter any house, or other place (wherever situated) or any vessel⁷; and
- 1140 (b) search for, seize and detain any wreck found there⁸.

If any seizure of wreck is so made⁹ in consequence of information given by any person to the receiver, the person giving the information is entitled, by way of salvage¹⁰, to such sum, not exceeding £100, as the receiver may allow¹¹.

1 As to the meaning of 'receiver' see PARA 884 note 4.

2 As to the meaning of 'wreck' see PARA 987.

3 Merchant Shipping Act 1995 s 247(1)(a).

4 Merchant Shipping Act 1995 s 247(1)(b).

5 Merchant Shipping Act 1995 s 247(1). As to justices of the peace see **MAGISTRATES** vol 29(2) (Reissue) PARA 501 et seq; and as to applications for a search warrant see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 871 et seq.

6 Merchant Shipping Act 1995 s 247(2).

7 Merchant Shipping Act 1995 s 247(2)(a). As to the meaning of 'vessel' see PARA 885 note 5.

8 Merchant Shipping Act 1995 s 247(2)(b).

9 Ie under the Merchant Shipping Act 1995 s 247: see s 247(3).

10 As to the meaning of 'salvage' see PARA 883.

11 Merchant Shipping Act 1995 s 247(3).

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(vi) Removal of Wrecks

1008. Powers of harbour and conservancy authorities in relation to wrecks.

Where any vessel¹ is sunk, stranded or abandoned in, or in or near any approach to, any harbour² or tidal water³ under the control of a harbour authority⁴ or conservancy authority⁵ in such a manner as, in the opinion of the authority, to be, or be likely to become, an obstruction or danger to navigation or to lifeboats engaged in lifeboat service in that harbour or water or approach thereto, that authority may exercise any of the following powers⁶, namely:

- 1141 (1) to take possession of, and raise, remove or destroy the whole or any part of the vessel and any other property to which the power extends⁷;
- 1142 (2) to light or buoy the vessel or part of the vessel and any such other property until it is raised, removed or destroyed⁸; and
- 1143 (3) to sell, in such manner as the authority thinks fit, the vessel or part of the vessel so raised or removed and any other property recovered in the exercise of the powers conferred by head (1) or head (2) above⁹;
- 1144 (4) to reimburse itself, out of the proceeds of the sale, for the expenses incurred by it in relation to the sale¹⁰.

The other property to which the powers conferred by heads (1) to (4) above extend is every article or thing or collection of things being or forming part of the equipment, cargo, stores or ballast of the vessel¹¹.

Any surplus of the proceeds of a sale under head (3) above must be held by the authority on trust for the persons entitled thereto¹². Except in the case of property which is of a perishable nature or which would deteriorate in value by delay, no sale may be made under head (3) above until at least seven days' notice of the intended sale has been given by advertisement in a local newspaper circulating in or near the area over which the authority has control¹³; and, at any time before any property is sold under head (3) above, the owner of the property is entitled to have it delivered to him on payment of its fair market value¹⁴. The market value of property for those purposes is that agreed on between the authority and the owner or, failing agreement, that determined by a person appointed for the purpose by the Secretary of State¹⁵; and the sum so paid to the authority in respect of any property is to be treated, for the purposes of these provisions, as the proceeds of sale of the property¹⁶.

Any proceeds of sale arising under head (3) above from the sale of a vessel and any other property recovered from the vessel are to be treated as a common fund¹⁷.

If any question arises between a harbour authority or conservancy authority and a general lighthouse authority as to their respective powers¹⁸ in relation to any place in or near an approach to a harbour or tidal water, that question must, on the application of either authority, be referred to the Secretary of State for his decision¹⁹; and any such decision of the Secretary of State is final²⁰.

1 As to the meaning of 'vessel' see PARA 885 note 5.

2 As to the meaning of 'harbour' see PARA 49 note 5.

- 3 As to the meaning of 'tidal water' see PARA 987 note 6.
- 4 As to the meaning of 'harbour authority' see PARA 68 note 4. The provisions of the Merchant Shipping Act 1995 s 252 are without prejudice to any other powers of a harbour authority: see s 252(10).
- 5 As to the meaning of 'conservancy authority' see PARA 71 note 2. The provisions of the Merchant Shipping Act 1995 s 252 are without prejudice to any other powers of a conservancy authority: see s 252(10).
- 6 Merchant Shipping Act 1995 s 252(1).
- 7 Merchant Shipping Act 1995 s 252(2)(a).
- 8 Merchant Shipping Act 1995 s 252(2)(b).
- 9 Merchant Shipping Act 1995 s 252(2)(c). The power set out in head (3) in the text is subject to s 252(5), (6) (see the text and notes 13-14): see s 252(2)(c).
- 10 Merchant Shipping Act 1995 s 252(2)(d).
- 11 Merchant Shipping Act 1995 s 252(3).
- 12 Merchant Shipping Act 1995 s 252(4).
- 13 Merchant Shipping Act 1995 s 252(5).
- 14 Merchant Shipping Act 1995 s 252(6).
- 15 Merchant Shipping Act 1995 s 252(7). As to the Secretary of State see PARA 38.
- 16 Merchant Shipping Act 1995 s 252(8).
- 17 Merchant Shipping Act 1995 s 252(9).
- 18 Ie under the Merchant Shipping Act 1995 s 252 or under s 253 (see PARA 1009): see s 254(1).
- 19 Merchant Shipping Act 1995 s 254(1).
- 20 Merchant Shipping Act 1995 s 254(2).

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1009. Respective powers of lighthouse authorities in relation to wrecks.

Where:

- 1145 (1) any vessel¹ is sunk, stranded or abandoned in any fairway or on the seashore or on or near any rock, shoal or bank in the United Kingdom² or any of the adjacent seas or islands³; and
- 1146 (2) there is no harbour authority⁴ or conservancy authority⁵ having power to raise, remove or destroy the vessel⁶,

the general lighthouse authority⁷ for the place in or near which the vessel is situated has, if in the authority's opinion the vessel is, or is likely to become, an obstruction or danger to navigation or to lifeboats engaged in lifeboat service, the same powers in relation thereto as those conferred⁸ on harbour and conservancy authorities in relation to wrecks⁹.

Where a general lighthouse authority has incurred expenses in its exercise of these powers¹⁰ in relation to any vessel, then¹¹:

- 1147 (a) if the proceeds of any sale made¹² in connection with the exercise of those powers in relation to the vessel are insufficient to reimburse the authority for the full amount of those expenses, the authority may recover the amount of the deficiency from the relevant person¹³; or
- 1148 (b) if there is no such sale, the authority may recover the full amount of those expenses from the relevant person¹⁴.

Any expenses so incurred which are not recovered by the authority either out of the proceeds of any such sale or in accordance with head (a) or head (b) above must be paid out of the General Lighthouse Fund¹⁵.

If any question arises between a harbour authority or conservancy authority and a general lighthouse authority as to their respective powers¹⁶ in relation to any place in or near an approach to a harbour or tidal water¹⁷, that question must, on the application of either authority, be referred to the Secretary of State¹⁸ for his decision¹⁹; and any such decision of the Secretary of State is final²⁰.

1 As to the meaning of 'vessel' see PARA 885 note 5.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping Act 1995 s 253(1)(a).

4 As to the meaning of 'harbour authority' see PARA 68 note 4.

5 As to the meaning of 'conservancy authority' see PARA 71 note 2.

6 Merchant Shipping Act 1995 s 253(1)(b).

7 As to the meaning of 'general lighthouse authority' see PARA 1068.

- 8 le conferred by the Merchant Shipping Act 1995 s 252 (see PARA 1008): see s 253(1).
- 9 Merchant Shipping Act 1995 s 253(1). As to the powers of lighthouse authorities in relation to wrecks see also PARA 1098.
- 10 le the powers under the Merchant Shipping Act 1995 s 253: see s 253(2).
- 11 Merchant Shipping Act 1995 s 253(2).
- 12 le under the Merchant Shipping Act 1995 s 252 (see PARA 1008): see s 253(2)(a).
- 13 Merchant Shipping Act 1995 s 253(2)(a). For these purposes, 'relevant person', in relation to any vessel, means the owner of the vessel at the time of the sinking, stranding or abandonment of the vessel: s 253(4).
- 14 Merchant Shipping Act 1995 s 253(2)(b).
- 15 Merchant Shipping Act 1995 s 253(3). However, the provisions of s 213 (see PARA 1091) apply to those expenses as if they were expenses of the authority falling within s 213(1) other than establishment expenses: see s 253(3). As to the General Lighthouse Fund see PARA 1089.
- 16 le under the Merchant Shipping Act 1995 s 252 (see PARA 1008) or under s 253: see s 254(1).
- 17 As to the meaning of 'tidal water' see PARA 987 note 6.
- 18 As to the Secretary of State see PARA 38.
- 19 Merchant Shipping Act 1995 s 254(1).
- 20 Merchant Shipping Act 1995 s 254(2).

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1010. Insufficient lighting and buoying.

Where the owners, although in possession, have transferred the management and control of a wreck to a wreck-raising authority¹, they are not liable and the wreck is not liable for any collision which may happen through subsequent insufficient lighting and buoying², but the authority may be liable for its own negligence³.

¹ As to the authorities empowered to remove wreck see PARAS 1008, 1009.

² *White v Crisp* (1854) 10 Exch 312; *The Douglas* (1882) 7 PD 151, 5 Asp MLC 15, CA; *Utopia (Owners) v Primula (Owners)*, *The Utopia* [1893] AC 492, 7 Asp MLC 408, PC. Cf *Brown v Mallett* (1848) 5 CB 599 at 618; *Kidston v M'Arthur and Clyde Navigation Trustee* (1878) 5 R 936 (control not transferred); *The Snark* [1900] P 105, 9 Asp MLC 50, CA (liability of owner for negligence of independent contractor); and see PARA 816.

³ *Dormont v Furness Rly Co* (1883) 11 QBD 496, 5 Asp MLC 127; *Mersey Docks Trustees v Gibbs* (1886) LR 1 HL 93; *Gilbert v Trinity House Corp'n* (1886) 17 QBD 795, DC; *The Manorbier Castle* (1922) 16 Asp MLC 151 at 154.

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(vii) Protection of Wrecks

UPDATE

1011. Protection of sites of historic wrecks.

Material relating to this paragraph has been revised and published under the title **NATIONAL AND CULTURAL HERITAGE** vol 77 (2010).

1012. Prohibition on approaching dangerous wrecks.

If the Secretary of State¹ is satisfied with respect to a vessel lying wrecked in United Kingdom waters² that:

- 1149 (1) because of anything contained in it, the vessel is in a condition which makes it a potential danger to life or property³; and
- 1150 (2) on that account it ought to be protected from unauthorised interference⁴,

he may by order designate an area round the vessel as a 'prohibited area'⁵.

Such an order must identify the vessel and the place where it is lying⁶; and:

- 1151 (a) the prohibited area must be all within such distance of the vessel as is specified by the order, excluding any area above high water mark of ordinary spring tides⁷; and
- 1152 (b) the distance specified for the purposes of head (a) above must be whatever the Secretary of State thinks appropriate to ensure that unauthorised persons are kept away from the vessel⁸.

A person who without due authority enters a prohibited area commits an offence⁹.

¹ As to the Secretary of State see PARA 38. Functions of the Secretary of State under the Protection of Wrecks Act 1973 are transferred so as to be exercisable in relation to Wales by the Welsh Ministers, except for those functions under s 2: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; and PARA 1011 note 2. As to the meaning of 'Wales' see PARA 17 note 2.

² As to the meaning of 'United Kingdom waters' see PARA 1011 note 3. As to the meaning of 'United Kingdom' see PARA 17 note 3.

³ Protection of Wrecks Act 1973 s 2(1)(a).

⁴ Protection of Wrecks Act 1973 s 2(1)(b).

⁵ Protection of Wrecks Act 1973 s 2(1). An order under s 2 must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and may be varied or revoked by a subsequent order under s 2: s 3(2). The Secretary of State must revoke an order made under s 2 designating a prohibited area if he is satisfied that the vessel in question is no longer in a condition which makes it a potential danger to life or property: s 3(2)(b). As such orders are local in nature, they are not noted in this work.

- 6 Protection of Wrecks Act 1973 s 2(2).
- 7 Protection of Wrecks Act 1973 s 2(2)(a).
- 8 Protection of Wrecks Act 1973 s 2(2)(b).
- 9 See **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1065.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/10. SALVAGE AND WRECK/(2) WRECK/(vii) Protection of Wrecks/1013. Implementation of international agreements.

1013. Implementation of international agreements.

The Secretary of State¹ may by order made by statutory instrument² make such provision as he considers appropriate for the purpose of giving effect to any international agreement³:

- 1153 (1) to which the United Kingdom⁴ is, or at the time when the order takes effect will be, a party⁵; and
- 1154 (2) which relates to the protection of wrecks⁶ outside United Kingdom waters⁷.

Such an order may⁸ include⁹:

- 1155 (a) provision designating a wreck, or an area in which a wreck is situated, for the purposes of the order¹⁰;
- 1156 (b) provision prohibiting or restricting access to that wreck or area or interference with that wreck¹¹;
- 1157 (c) provision for the granting of licences by the Secretary of State¹²;
- 1158 (d) provision authorising a person authorised by the Secretary of State in accordance with the order to board and search any ship which is in United Kingdom waters and any United Kingdom ship¹³ which is in international waters¹⁴;
- 1159 (e) provision authorising such a person to seize anything found in the course of a search authorised under the order¹⁵;
- 1160 (f) provision that, subject to heads (i) and (ii) below, a contravention of a requirement imposed by the order is an offence punishable, on summary conviction, by a fine not exceeding the statutory maximum¹⁶ or, on conviction on indictment, by a fine¹⁷; and
- 1161 (g) such incidental, supplementary and transitional provision as appears to the Secretary of State to be appropriate for the purposes of the order¹⁸.

However, no person is to be guilty of an offence under such an order unless¹⁹:

- 1162 (i) the acts or omissions which constitute the offence are committed in the United Kingdom, in United Kingdom waters or on board a United Kingdom ship²⁰; or
- 1163 (ii) in a case where those acts or omissions are committed in international waters but not on board a United Kingdom ship, that person is: (A) a British citizen²¹, a British Overseas Territories citizen²² or a British Overseas citizen²³; (B) a person who under the British Nationality Act 1981 is a British subject²⁴; (C) a British National (Overseas) within the meaning of the British Nationality Act 1981²⁵; (D) a British protected person within the meaning of the British Nationality Act 1981²⁶; or (E) a company²⁷.

Subject to heads (i) and (ii) above, any offence under such an order²⁸ is deemed, for the purpose only of conferring jurisdiction on any court, to have been committed in any place where the offender may for the time being be²⁹. However, no proceedings for an offence under any such order may be instituted in England and Wales³⁰ except by or with the consent of the Director of Public Prosecutions³¹.

1 As to the Secretary of State see PARA 38.

2 A statutory instrument containing an order under the Merchant Shipping and Maritime Security Act 1997 s 24(1) is subject to annulment in pursuance of a resolution of either House of Parliament: s 24(7).

3 Merchant Shipping and Maritime Security Act 1997 s 24(1). The Secretary of State, in exercise of the powers conferred upon him by s 24(1), (2) has made the Protection of Wrecks (RMS Titanic) Order 2003, SI 2003/2496.

4 As to the meaning of 'United Kingdom' see PARA 17 note 3.

5 Merchant Shipping and Maritime Security Act 1997 s 24(1)(a).

6 For these purposes, 'wreck' means the wreck of any ship other than a ship which, at the time it sank or was stranded, was in service with, or used for the purposes of, any of the armed forces of the United Kingdom or any other country or territory; and 'ship' includes any description of vessel used in navigation: Merchant Shipping and Maritime Security Act 1997 s 24(8).

7 Merchant Shipping and Maritime Security Act 1997 s 24(1)(b). For these purposes, 'United Kingdom waters' means the sea or other waters within the seaward limits of the territorial sea of the United Kingdom: s 24(8). As to the extent of the territorial and non-territorial sea (or waters) generally see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 121 et seq.

8 le without prejudice to the generality of the Merchant Shipping and Maritime Security Act 1997 s 24(1) (see the text and notes 1-7): see s 24(2).

9 Merchant Shipping and Maritime Security Act 1997 s 24(2).

10 Merchant Shipping and Maritime Security Act 1997 s 24(2)(a).

11 Merchant Shipping and Maritime Security Act 1997 s 24(2)(b).

12 Merchant Shipping and Maritime Security Act 1997 s 24(2)(c).

13 For these purposes, 'United Kingdom ship' means a ship which either is registered in the United Kingdom, or is not registered under the law of any country but is wholly owned by persons each of whom is a person mentioned in the Merchant Shipping and Maritime Security Act 1997 s 24(3)(b)(i)-(v) (see heads (ii)(A) to (ii)(E) in the text): s 24(4). As to the registration of ships in the United Kingdom see PARA 245 et seq.

14 Merchant Shipping and Maritime Security Act 1997 s 24(2)(d). For these purposes, 'international waters' means any part of the sea outside the seaward limits of the territorial sea of any country or territory: s 24(8).

15 Merchant Shipping and Maritime Security Act 1997 s 24(2)(e).

16 As to the meaning of 'statutory maximum' see PARA 1099.

17 Merchant Shipping and Maritime Security Act 1997 s 24(2)(f).

18 Merchant Shipping and Maritime Security Act 1997 s 24(2)(g).

19 Merchant Shipping and Maritime Security Act 1997 s 24(3).

20 Merchant Shipping and Maritime Security Act 1997 s 24(3)(a).

21 As to the meaning of 'British citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq.

22 As to the meaning of 'British overseas territories citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 44-57.

23 Merchant Shipping and Maritime Security Act 1997 s 24(3)(b)(i) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). As to the meaning of 'British Overseas citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 58 et seq.

24 Merchant Shipping and Maritime Security Act 1997 s 24(3)(b)(ii). As to British subjects under the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 9, 66-67.

25 Merchant Shipping and Maritime Security Act 1997 s 24(3)(b)(iii). As to British Nationals (Overseas) within the meaning of the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 63-65.

26 Merchant Shipping and Maritime Security Act 1997 s 24(3)(b)(iv). As to British protected persons under the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 10, 72 et seq.

27 Merchant Shipping and Maritime Security Act 1997 s 24(3)(b)(v). Head (ii)(E) in the text refers to a company within the meaning of the Companies Act 1985 (see **COMPANIES** vol 14 (2009) PARAS 1, 24): see the Merchant Shipping and Maritime Security Act 1997 s 24(3)(b)(v).

28 Is an order under the Merchant Shipping and Maritime Security Act 1997 s 24(1) (see the text and notes 1-7): see s 24(5).

29 Merchant Shipping and Maritime Security Act 1997 s 24(5).

30 As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

31 See the Merchant Shipping and Maritime Security Act 1997 s 24(6). As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

UPDATE

1013 Implementation of international agreements

TEXT AND NOTE 27--Merchant Shipping and Maritime Security Act 1997 s 24(3)(b)(v) substituted: SI 2009/1941.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/11. LIENS ON SHIPS, FREIGHT AND CARGO/(1) MARITIME LIENS/1014. Nature and extent.

11. LIENS ON SHIPS, FREIGHT AND CARGO

(1) MARITIME LIENS

1014. Nature and extent.

A maritime lien is a claim or privilege on a maritime property (most often a ship or her apparel or cargo, or any combination of those, and referred to, especially historically, as the 'res') in respect of service done to it or damage caused by it¹. Such a lien does not import or require possession of the property against which the claim is brought or privilege claimed, for it is a claim or privilege on the property to be carried into effect by legal process². A maritime lien travels with the property into whosoever possession it may come, even though the property may have been purchased without notice of the lien³ or may have been seized by the sheriff under a writ of fieri facias issued at the instance of execution creditors⁴. A maritime lien is inchoate from the moment the claim or privilege attaches, and, when called into effect by the legal process of a proceeding in rem, relates back to the period when it first attached⁵.

There can be no maritime lien on a res which is not a ship or her apparel or cargo⁶ and, if a lien has attached to a maritime res which is sold by the owner, there is no lien against the proceeds of sale since the lien travels with the property against which the claim is brought or privilege claimed⁷. A maritime lien only attaches to the particular property in respect of which the claim arises and not to any other property of the owner⁸. An owner's lien over cargoes or subfreights is contractual only, having no independent root in Admiralty, common law, equity or statute, and creates a right only as between the parties to the contract in which it is contained⁹.

A maritime lien does not attach when the subject property belongs to the Crown or is owned by a foreign state¹⁰. Nothing in the Crown Proceedings Act 1947¹¹ authorises proceedings in rem in respect of any claim against the Crown, or the arrest, detention or sale of any of Her Majesty's ships, or of any cargo or other property belonging to the Crown, or gives to any person any lien on any such ship, cargo or other property¹².

Where a ship is under requisition by the Crown or a foreign state, no lien attaches in respect of damage done by her whilst under requisition¹³; but, where salvage services are rendered to a ship under requisition and her owners derive some benefit from those services, a maritime lien does attach, although it is unenforceable whilst the ship remains under requisition¹⁴.

1 *Harmer v Bell, The Bold Buccleugh* (1852) 7 Moo PCC 267 at 284 (approved in *Currie v M'Knight* [1897] AC 97 at 106, 8 Asp MLC 193 at 195, HL); *The Ripon City* [1897] P 226 at 241, 242, 8 Asp MLC 304 at 310, 311 per Gorell Barnes J. See also PARA 83. The law relating to maritime liens is the same in England and Scotland (*Currie v M'Knight*), and applies to hovercraft and property connected with hovercraft, notwithstanding that the hovercraft is on land at any relevant time (see the Hovercraft Act 1968 s 2(2); and PARA 383).

Damage giving rise to any claim under the Nuclear Installations Act 1965, in respect of any occurrence which constitutes a breach of duty under ss 7-11, does not give rise to a lien or other right in respect of any ship or aircraft: see s 14; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1504.

2 *Harmer v Bell, The Bold Buccleugh* (1852) 7 Moo PCC 267; *The Ripon City* [1897] P 226, 8 Asp MLC 304; *The Tervaete* [1922] P 259 at 270, 16 Asp MLC 48 at 55, CA.

3 *Harmer v Bell, The Bold Buccleugh* (1852) 7 Moo PCC 267; *The Nymph* (1856) Sw 86; *The Ripon City* [1897] P 226 at 241, 8 Asp MLC 304 at 310. Thus, even where a ship is let under a charterparty by demise, the res remains with the owner: *The Father Thames* [1979] 2 Lloyd's Rep 364.

4 *The James W Elwell* [1921] P 351, 15 Asp MLC 418; *The Ile de Ceylan* [1922] P 256, 16 Asp MLC 23. As to writs of fieri facias generally see **CIVIL PROCEDURE** vol 12 (2009) PARA 1266 et seq.

5 *Harmer v Bell, The Bold Buccleugh* (1852) 7 Moo PCC 267 at 284; *Hamilton v Baker, The Sara* (1889) 14 App Cas 209 at 216, 6 Asp MLC 413 at 414, HL, per Lord Halsbury LC; *The Tervaete* [1922] P 259 at 270, 16 Asp MLC 48 at 55, CA, per Scrutton LJ.

6 *Wells v Gas Float Whitton No 2 (Owners), The Gas Float Whitton No 2* [1897] AC 337, 8 Asp MLC 272, HL.

7 *The Optima* (1905) 10 Asp MLC 147, DC. It is otherwise where the sale takes place under the order of the court, because the court holds the proceeds subject to all liens which may be proved to exist against the res: see *The Optima* at 148 per Gorell Barnes P.

8 *The Beldis* [1936] P 51, 18 Asp MLC 598, CA. In certain circumstances, there may, however, exist a statutory right to proceed in rem against another ship beneficially owned by the same person as the ship in respect of which the claim arose: see the Supreme Court Act 1981 s 21(4); and PARA 93.

9 See *Samsun Logix Corp v Oceantrade Corp, Deval Denizcilik VE Ticaret AS v Oceantrade Corp* [2007] EWHC 2372 (Comm), [2008] 1 All ER (Comm) 673, [2008] 1 Lloyd's Rep 450, applying *Tradigrain SA v King Diamond Marine Ltd, The Spiros C* [2000] 2 All ER (Comm) 542, [2000] 2 Lloyd's Rep 319, CA.

10 *The Constitution* (1879) 4 PD 39, 4 Asp MLC 79; *The Parlement Belge* (1880) 5 PD 197, 4 Asp MLC 234, CA; *The Tervaete* [1922] P 259, 16 Asp MLC 48, CA.

11 As to the Crown Proceedings Act 1947 generally see **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 102 et seq.

12 Crown Proceedings Act 1947 s 29(1). As to Admiralty claims in rem generally see PARA 158 et seq. Where proceedings in rem have been instituted in the reasonable belief that the ship, cargo or property did not belong to the Crown, the court, if satisfied of this, may on terms order the proceedings to be treated as if in personam against the Crown or other person to be sued: see the Crown Proceedings Act 1947 s 29(2); and PARA 179. References in whatever terms in s 29 to ships, vessels or boats or activities or places connected with them include references to hovercraft or activities connected with hovercraft: *Hovercraft (Application of Enactments) Order 1972*, SI 1972/971, art 4, Sch 1 Pt A. See also the Supreme Court Act 1981 s 24(2)(c); and PARA 85.

13 *The Sylvan Arrow* [1923] P 220, 16 Asp MLC 244.

14 *The Meandros* [1925] P 61, 16 Asp MLC 476. As to salvage generally see PARA 876 et seq.

UPDATE

1014 Nature and extent

NOTES 8, 12--Supreme Court Act 1981 now cited as Senior Courts Act 1981:
Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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1015. Extent of judgment in rem.

When a judgment in rem is pronounced in respect of a maritime lien, it binds all the world to the extent that it enables the holder of the maritime lien to enforce the judgment against the property in respect of which the claim is brought (or privilege claimed), irrespective of the personal liability of the person into whose possession the property may have come¹.

A judgment in rem of a foreign court of competent jurisdiction in respect of a maritime lien is regarded by the English courts as conclusive and binding against all the world, even though a maritime lien would not have arisen in the same circumstances under English law². A judgment in rem of a foreign court of competent jurisdiction will be enforced in the English courts by an action in rem; but a judgment in personam of a foreign court of competent jurisdiction will not be enforced in the English courts by an action in rem, even though in the same circumstances there would be a maritime lien under English law³.

1 A maritime lien travels with the res into whosoever possession it may come, even though the res may have been purchased without notice of the lien: see PARA 1014. As to enforcement of liens see PARA 1037 et seq. As to Admiralty claims in rem generally see PARA 158 et seq.

2 *Minna Craig Steamship Co v Chartered Mercantile Bank of India, London and China* [1897] 1 QB 460, 8 Asp MLC 241, CA. See also *Castrique v Imrie* (1870) LR 4 HL 414; and **CONFLICT OF LAWS** vol 8(3) (Reissue) PARAS 140, 158, 162, 163.

3 *The City of Mecca* (1879) 5 PD 28, 4 Asp MLC 187; on appeal (1881) 6 PD 106, 4 Asp MLC 412, CA (where the Court of Appeal reversed the decision at first instance on the ground that the judgment of the foreign court was not a judgment in rem).

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1016. Maritime liens recognised by English law.

The maritime liens recognised by English law are those in respect of bottomry and respondentia bonds¹, salvage of property², seamen's wages³, damage⁴ and a salvor's rights under any international convention or national law⁵. A maritime lien has been held not to exist in respect of towage⁶, the supply of goods, materials etc⁷ or insurance contributions⁸. It is doubtful whether a maritime lien exists in respect of pilotage dues⁹.

Statutory rights and remedies similar to those enjoyed by the holder of a maritime lien, and enforced in similar manner, include claims in respect of the wages, disbursements and liabilities of the master of a ship¹⁰; claims in respect of damage to land caused by persons rendering services to a vessel wrecked, stranded or in distress¹¹; claims in respect of the fees and expenses of a receiver of wreck¹²; and claims in respect of the expenses of a local authority incurred on account of the burial or destruction of the carcase of any animal or carcase thrown or washed from any vessel¹³.

1 As to bottomry and respondentia bonds see PARA 1022. See also PARA 133.

2 As to salvage see PARAS 113 et seq, 1019.

3 As to seamen's wages see PARAS 127, 1020.

4 As to damage see also PARAS 109, 1027.

5 See PARAS 911, 1019.

6 *Westrup v Great Yarmouth Steam Carrying Co* (1889) 43 ChD 241, 6 Asp MLC 443.

7 *Northcote v The Henrich Björn (Owners), The Henrich Björn* (1886) 11 App Cas 270, 6 Asp MLC 1, HL; *The Cella* (1888) 13 PD 82, CA; *The James W Elwell* [1921] P 351, 15 Asp MLC 418. See also PARA 1033 note 1.

8 *Cassa Nazionale della Previdenza Marinara v Proceeds of the Sale of the Italian SS Acrux, The Acrux* [1965] P 391, [1965] 2 All ER 323, [1965] 1 Lloyd's Rep 565. As to an insurance agent's lien on a maritime insurance policy see the Marine Insurance Act 1906 s 53; and **INSURANCE** vol 25 (2003 Reissue) PARA 274.

9 See PARA 1020 note 2; and see PARA 125.

10 See the Merchant Shipping Act 1995 s 41; and PARAS 477, 1021. As to the Admiralty jurisdiction in this respect see PARA 127 et seq. In effect, this provision gives the master of a vessel a maritime lien: *The Ripon City* [1897] P 226 at 232, 234, 242, 247, 8 Asp MLC 304 at 308, 311, 312 per Gorrell Barnes J. See also *Morgan v Castlegate Steamship Co, The Castlegate* [1893] AC 38 at 46, 7 Asp MLC 284 at 285, HL, per Lord Herschell.

11 See the Merchant Shipping Act 1995 s 234(5), (6); and PARA 995.

12 See the Merchant Shipping Act 1995 s 249(3); and PARA 989.

13 See the Animal Health Act 1981 s 57; and **ANIMALS** vol 2 (2008) PARA 1125.

UPDATE

1016 Maritime liens recognised by English law

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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1017. Lien for damage done by a ship.

The lien for damage done by a ship arises when damage is done by the ship¹ to another ship or property², whether on the high seas or within the limits of a port³, through some wrongful act of navigation of the ship from want of skill or from negligence of the persons by whom she is navigated, being at the time of the damage⁴ her owners or the employees of her owners, or having the possession and control of her by their authority⁵.

Thus, charterers who have the control, or any persons who are allowed to have possession, of a ship for the purpose of using or employing her in the ordinary manner are deemed to have authority to subject her to liens, and so to make her liable for their negligence⁶; but the presumption is not absolute and may be rebutted by showing that the person navigating the ship did not derive any authority from the owners⁷, or that the injured party is precluded by the terms of a contract from recovering against them⁸.

Where the person in charge or possession of the ship has no such authority, express or implied, no lien arises. Thus, there is no lien for wilful damage by the master, or for his wilful acts⁹, or for an act of a person in possession of the ship done in asserting a right claimed by him not as an employee or on behalf of the owner¹⁰.

1 The damage must be mediately or immediately caused by an act of navigation. Thus, where the crew of one ship cut the moorings of another ship, as a result of which that other ship was damaged, no lien attached to the first ship: *Currie v M'Knight* [1897] AC 97, 8 Asp MLC 193, HL, approving *Harmer v Bell*, *The Bold Buccleugh* (1852) 7 Moo PCC 267. A lien cannot be enforced against the property of a foreign sovereign state: *The Parlement Belge* (1880) 5 PD 197, 4 Asp MLC 234, CA; *The Jassy* [1906] P 270, 10 Asp MLC 278. A lien against a foreign sovereign cannot exist at all: *The Tervaeete* [1922] P 259 at 274, 16 Asp MLC 48 at 57, CA, per Atkin LJ.

2 *The Merle* (1874) 2 Asp MLC 402; *Mersey Docks and Harbour Board v Turner, The Zeta* [1893] AC 468, 7 Asp MLC 369, HL (damage to a ship by collision with a pier-head); *The Veritas* [1901] P 304, 9 Asp MLC 237 (damage to a landing stage); *The Tolten* [1946] P 135, sub nom *United Africa Co Ltd v Tolten (Owners)*, *The Tolten* [1946] 2 All ER 372, CA (damage to a wharf).

3 *The Veritas* [1901] P 304, 9 Asp MLC 237.

4 *The Parlement Belge* (1880) 5 PD 197 at 218, 4 Asp MLC 234 at 244, CA; *Utopia (Owners) v Primula (Owners and Master)*, *The Utopia* [1893] AC 492, 7 Asp MLC 408, PC.

5 *The Ripon City* [1897] P 226 at 245, 8 Asp MLC 304 at 312. See also PARA 840.

6 *The Ripon City* [1897] P 226 at 244, 8 Asp MLC 304 at 311. See also *The Ticonderoga* (1857) Sw 215 (where damage was done by a ship when in the possession and under the full control of charterers); *The Ruby Queen* (1861) Lush 266; *The Lemington* (1874) 2 Asp MLC 475 (where damage was done by a yacht in the hands of yacht agents for sale); *The Tasmania* (1888) 13 PD 110 at 118, 6 Asp MLC 305 at 309; *The Sylvan Arrow* [1923] P 220, 16 Asp MLC 244 (where Hill J reviewed all the authorities on this subject).

7 *The Sylvan Arrow* [1923] P 220, 16 Asp MLC 244 (where damage was done by a vessel requisitioned and controlled by the United States government).

8 *The Tasmania* (1888) 13 PD 110 at 118, 6 Asp MLC 305 at 309. See also **CARRIAGE AND CARRIERS**.

9 *The Druid* (1842) 1 Wm Rob 391; *The Ida* (1860) Lush 6.

10 *Yeo v Tatem, The Orient* (1871) LR 3 PC 696, 1 Asp MLC 108; *The Parlement Belge* (1880) 5 PD 197 at 218, 4 Asp MLC 234 at 244, CA, per Brett LJ; *Morgan v Castlegate Steamship Co, The Castlegate* [1893] AC 38

at 52, 7 Asp MLC 284 at 288, HL, per Lord Watson. See also *The Halley* (1868) LR 2 PC 193; cf *The Ruby Queen* (1861) Lush 266; *The Ripon City* [1897] P 226, 8 Asp MLC 304.

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1018. Property to which lien attaches.

The moment the damage is done by the ship the lien attaches to her hull, tackle, apparel, furniture and freight¹. It does not originate in possession and it follows the ship into whosoever possession she may pass², and continues even after the ship is wrecked and may be enforced against the wreck³. The lien on freight may, however, only be enforced together with the enforcement of a lien on the ship, being consequential to that lien⁴. A lien for damage is normally unenforceable after two years⁵.

1 *The Alexander* (1812) 1 Dods 278 at 282 per Sir W Scott (sails and rigging); *The Dundee* (1823) 1 Hag Adm 109 at 124 per Lord Stowell (fishing gear); *The Victor* (1860) Lush 72; *The Leo* (1862) Lush 444 (freight); *The Mary Ann* (1865) LR 1 A & E 8 at 11 per Dr Lushington; *The Roecliff* (1869) LR 2 A & E 363.

2 *The Mellona* (1848) 3 Wm Rob 16 at 21 per Dr Lushington; *Dean v Richards, The Europa* (1863) 2 Moo PCCNS 1. A subsequent owner cannot be made liable to the extent of the freight earned by the ship at the time of the collision: *The Mellona* at 25, 26 per Dr Lushington.

3 *The Neptune* (1824) 1 Hag Adm 227; *Harmer v Bell, The Bold Buccleugh* (1852) 7 Moo PCC 267; *The Annie* (1886) 12 PD 50, 6 Asp MLC 117.

4 *Smith v Plummer* (1818) 1 B & Ald 575 at 582 per Lord Ellenborough CJ; *Morgan v Castlegate Steamship Co, The Castlegate* [1893] AC 38, 7 Asp MLC 284, HL. Thus, freight collected and paid into a bank cannot be arrested: *The Kaleten* (1914) 30 TLR 572.

5 See PARA 1041.

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1019. Salvage of property.

The lien for salvage is created by the rendering of salvage services to a maritime res or, in certain circumstances, by the saving of life¹ from a ship². The lien attaches to the ship, freight and cargo severally but not jointly, and each is liable to contribute towards the salvage in proportion to its value³, but cannot, except in cases of express agreement, be made liable for the salvage due from the other⁴. The lien accrues immediately upon the performance of the salvage services⁵ and attaches to the salvaged vessel, her cargo and freight where freight has been saved⁶. It is unaffected by any change in the ownership or possession of the salvaged property⁷, and the benefit of it can be lost only by the laches of the salvor⁸. A lien for salvage services rendered is normally unenforceable after two years⁹.

1 Nothing in the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) affects the salvor's maritime lien under any international convention or national law: see art 20(1); and PARA 911. The salvor may not, however, enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided: see art 20(2); and PARA 911. As to the right to salvage for saving life see PARAS 907, 927.

2 See *Bligh v Simpson, The Fusilier* (1865) Brown & Lush 341 at 344, PC, per Dr Lushington; *The Schiller (Cargo ex)* (1877) 2 PD 145 at 149, 3 Asp MLC 439 at 422, CA, per Brett LJ. See also PARA 114 (Admiralty jurisdiction in respect of salvage of aircraft). The maritime res in salvage must be a ship or part of a ship or her apparel or cargo (*Falcke v Scottish Imperial Insurance Co* (1886) 34 ChD 234 at 248, CA, per Bowen LJ; *Wells v Gas Float Whitton No 2 (Owners), The Gas Float Whitton No 2* [1897] AC 337, 8 Asp MLC 272, HL), but does not include ships or property of the Crown or of a foreign state, even though the property is carried in a private vessel, or private property on board a foreign warship which for public purposes is taking care of it (*The Constitution* (1879) 4 PD 39, 4 Asp MLC 79; *The Parlement Belge* (1880) 5 PD 197, 4 Asp MLC 234, CA; cf *The Bertie* (1886) 6 Asp MLC 26 (where a lien was enforced against the ship and freight where she carried government stores)); or wearing apparel of the passengers, master and crew, and effects for their daily use (*The Willem III* (1871) LR 3 A & E 487, 1 Asp MLC 129).

3 *The Westminster* (1841) 1 Wm Rob 229 at 233 per Dr Lushington; *The Charlotte Wylie* (1846) 2 Wm Rob 495. The lien cannot be enforced if the ship belongs to the Crown (*Young v SS Scotia* [1903] AC 501, 9 Asp MLC 485, PC), or is under requisition by the Crown (*The Broadmayne* [1916] P 64, 13 Asp MLC 356, CA), but is enforceable after the ship is released from requisition (*The Meandros* [1925] P 61, 16 Asp MLC 476).

4 *The Westminster* (1841) 1 Wm Rob 229; *The Charlotte Wylie* (1846) 2 Wm Rob 495 at 497 per Dr Lushington; *The Pyrennee* (1863) Brown & Lush 189; *The Raisby* (1885) 10 PD 114, 5 Asp MLC 473; *The Prinz Heinrich* (1888) 13 PD 31, 6 Asp MLC 273; *The Cumbrian* (1887) 6 Asp MLC 151.

5 *The Mary Anne* (1865) LR 1 A & E 8 at 11 per Dr Lushington.

6 *The Westminster* (1841) 1 Wm Rob 229; *The Charlotte Wylie* (1846) 2 Wm Rob 495.

7 *The Nymphe* (1856) Sw 86 at 87 per Dr Lushington.

8 *The Royal Arch* (1857) Sw 269 at 285 per Dr Lushington; *The Goulandris* [1927] P 182 at 195, 17 Asp MLC 209 at 215 per Bateson J.

9 See PARA 1041.

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1020. Seamen's wages.

The lien for the wages¹ of the master and seamen² attaches to the ship and freight and every part of it³, provided that the wages have been earned on board the ship⁴ under an ordinary mariner's contract⁵. It does not affect the right to the lien that the master and crew were engaged by some person who had no right to engage them, so long as they have earned the wages on the ship⁶. This lien is not dependent on the earning of freight⁷, but, if it does not attach to the ship, it cannot attach to the freight, for a lien on freight is consequential to the lien on the ship⁸. The lien for wages travels with the res into whosoever possession it may come⁹.

1 'Wages' includes subsistence money, viaticum (ie any sort of travel allowance), compensation for wrongful dismissal, money allowance instead of food, and a bonus to a master to stand by a ship and bring her home: *The Madonna d'Idra* (1811) 1 Dods 37 at 40; *Phillips v Highland Rly Co, The Ferret* (1883) 8 App Cas 329, 5 Asp MLC 94, PC; *The Tergeste* [1903] P 26, 9 Asp MLC 356; *The British Trade* [1924] P 104, 16 Asp MLC 296; *Cassa Nazionale della Previdenza Marinara v Proceeds of Sale of Italian SS Acrux, The Acrux* [1965] P 391, [1965] 2 All ER 323, [1965] 1 Lloyd's Rep 565. As to claims for severance pay and wages in lieu of notice see *The Tacoma City* [1990] 1 Lloyd's Rep 408.

2 As to who may sue for, and the recovery of, such wages see PARAS 127-132, 467 et seq. See also *Ross v Walker* (1765) 2 Wils 264 at 265. It is doubtful whether a pilot has a lien: *The Ambatielos, The Cephalonia* [1923] P 68, 16 Asp MLC 120; but cf *The Dowthorpe* (1843) 2 Wm Rob 73; and *La Constancia* (1846) 4 Notes of Cases 512.

3 *The Neptune* (1824) 1 Hag Adm 227 at 238 per Lord Stowell. See also *The Sydney Cove* (1815) 2 Dods 11 at 13 per Lord Stowell; *Bank of America National Trust and Savings Association v Epidavros Gulf Shipping Co SA, The Cape Sounion* [1990] 2 Lloyd's Rep 329.

4 *Morgan v Castlegate Steamship Co, The Castlegate* [1893] AC 38 at 52, 7 Asp MLC 284 at 288, HL, per Lord Watson.

5 A lien attaches only in respect of an ordinary contract of employment. As to the contract of employment generally see **EMPLOYMENT** vol 39 (2009) PARA 1 et seq.

The scope of a master's lien for wages is the same as that of a seaman: *The Ever Success* [1999] 1 Lloyd's Rep 824. Under a special contract, neither a master nor a seaman has a lien for wages or for damages for wrongful dismissal: *The Sydney Cove* (1815) 2 Dods 11; *The British Trade* [1924] P 104, 16 Asp MLC 296; *The Great Eastern* (1867) LR 1 A & E 384. In *The British Trade* it was, however, conceded that wages under a special contract, so far as earned on board, conferred a lien.

6 *Phillips v Highland Rly Co, The Ferret* (1883) 8 App Cas 329, 5 Asp MLC 94, PC (seamen earning wages under person attempting to steal ship); *The Edwin* (1864) Brown & Lush 281 (master appointed by person fraudulently in possession).

7 See *Hawkins v Twizell* (1856) 5 E & B 883; and see PARA 464.

8 *Smith v Plummer* (1818) 1 B & Ald 575 at 582 per Lord Ellenborough CJ; *Morgan v Castlegate Steamship Co, The Castlegate* [1893] AC 38, 7 Asp MLC 284, HL.

9 *The Nymph* (1856) Sw 86 at 87 per Dr Lushington; *The Fairport* (1882) 8 PD 48 at 55, 5 Asp MLC 62 at 63.

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1021. Disbursements and liabilities.

Disbursements and liabilities properly made or incurred by a master on account of a ship give him a lien on the ship, which may be enforced in the same way as his lien for wages¹; but the only disbursements and liabilities which can create this lien are those made by the master by virtue of his general authority and in the ordinary course of his employment, and for which he can pledge the owner's credit².

1 See the Merchant Shipping Act 1995 s 41; and PARA 477; *Morgan v Castlegate Steamship Co, The Castlegate* [1893] AC 38 at 46, 7 Asp MLC 284 at 286, HL, per Lord Herschell; *The Ripon City* [1897] P 226 at 232, 234, 242, 247, 8 Asp MLC 304 at 308, 311, 312 per Gorell Barnes J. The costs of a master in unsuccessfully defending an action on a dishonoured bill of exchange drawn by him on his owners for fuel supplied are not liabilities properly incurred unless the defence was reasonably necessary in the interest of the ship: *The Elmville (No 2)* [1904] P 422, 10 Asp MLC 23.

2 *The Ripon City* [1897] P 226, 8 Asp MLC 304. It is not necessary that the master should have been appointed by the real owners; it is sufficient if he was appointed by persons whom the owners have allowed to have possession and control of the ship: *The Turgot* (1886) 11 PD 21, 5 Asp MLC 548; *Morgan v Castlegate Steamship Co, The Castlegate* [1893] AC 38, 7 Asp MLC 284, HL; *The Orienta* [1895] P 49, 7 Asp MLC 529, CA; *The Cairo, Watson and Parker v Gregory* (1908) 11 Asp MLC 161. As to the power of a master to bind ship and cargo see PARA 437.

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1022. Bottomry and respondentia.

As soon as a bottomry or respondentia bond¹ is executed, a lien attaches to the property hypothecated, and continues to attach until the total destruction of the property². The lien for a bottomry bond travels with the property in respect of which the claim is brought (or privilege claimed), into whosoever possession it may come³.

1 As to bottomry and respondentia generally, and as to the hypothecation of the cargo, see PARAS 133, 437.

2 *Thomson v Royal Exchange Assurance Co* (1813) 1 M & S 30; *Stephen v Broomfield, The Great Pacific* (1869) LR 2 PC 516.

3 *The Nymph* (1856) Sw 86 at 87 per Dr Lushington.

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(2) STATUTORY AND POSSESSORY LIENS

1023. Statutory lien.

A statutory lien attaches when property is arrested in a claim in rem under Admiralty jurisdiction¹. The Admiralty jurisdiction of the High Court, including the cases in which that jurisdiction may be invoked by an action in personam, is defined by the Supreme Court Act 1981².

A statutory lien arising when property is arrested in an Admiralty claim in rem is of no avail against any subsisting charge on the property or against a purchaser in good faith for value³.

Harbour and dock authorities generally have a right under their own private statute to detain vessels in respect of damage to the harbour or dock works⁴, to detain and sell a ship in respect of dock and harbour dues⁵ and to take possession of and remove and sell wrecks and other obstructions and out of the proceeds to reimburse themselves for the conservancy expenses incurred⁶.

1 *The Cella* (1888) 13 PD 82, 6 Asp MLC 293, CA; *John Carlbon & Co Ltd v Zafiro (Owners), The Zafiro* [1960] P 1, [1959] 2 All ER 537, [1959] 1 Lloyd's Rep 359; *Richmond Shipping Ltd v D/S and A/S Vestland, The Vestland* [1980] 2 Lloyd's Rep 171. As to Admiralty claims in rem generally see PARA 158 et seq.

2 See the Supreme Court Act 1981 ss 20, 21; and PARA 81 et seq.

3 *Giovanni Daputo v James Wyllie & Co, The Pieve Superiore* (1874) LR 5 PC 482, 2 Asp MLC 319, PC; *The Aneroid* (1877) 2 PD 189; *The James W Elwell* [1921] P 351, 15 Asp MLC 418 (where a ship had been seized in execution by the sheriff at the instance of judgment creditors and claims in rem were instituted by the suppliers of goods, materials etc and by the master for wages; it was held that the suppliers of goods, materials etc had no rights at all until they arrested the res and had, therefore, to be postponed to the execution creditors, but that, as the ship when seized by the sheriff was incumbered with the master's lien for wages, the master's claim had priority over the claim of the execution creditors).

4 The right arises where the authority's special Act incorporates the Harbours, Docks, and Piers Clauses Act 1847 s 74 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 754), or includes similar provisions. The mere right to detain does not involve a right to sell and has been held to amount to a possessory lien: see *The Veritas* [1901] P 304, 9 Asp MLC 237; *Mersey Docks and Harbour Board v Hay, The Countess* [1923] AC 345, 490, 16 Asp MLC 161, HL. As to possessory liens see PARA 1024.

5 See the Harbours, Docks, and Piers Clauses Act 1847 s 44; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 676.

6 See the Harbours, Docks, and Piers Clauses Act 1847 s 56; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 691; the Merchant Shipping Act 1995 s 252; and PARA 1008.

UPDATE

1023 Statutory lien

TEXT AND NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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1024. Possessory lien.

A possessory lien is the right of a person in whose possession a ship or her appurtenances is or are to retain possession of her or them until payment or discharge of a debt or obligation due to that person in respect of her¹. Such a right belongs to one who repairs, alters or otherwise bestows labour or skill on a ship, and retains possession of her². There is no power to realise the security, even though expenses and inconvenience must be incurred in keeping it³.

1 Possessory liens (also sometimes described as common law liens) are now usually referred to as legal liens: see **LIEN** vol 68 (2008) PARAS 802, 817 et seq.

2 *Re Strickland, ex p Bland* (1814) 2 Rose 91; *Franklin v Hosier* (1821) 4 B & Ald 341; *Smith's Dock Co Ltd v The St Merriel (Owners)*, *The St Merriel* [1963] P 247, [1963] 1 All ER 537, [1963] 1 Lloyd's Rep 63; *Delantera Amadora SA v Bristol Channel Shiprepairers Ltd and Swansea Dry Dock, The Katingaki* [1976] 2 Lloyd's Rep 372 (where the lien extended to the cost of materials and work done, but did not cover dock charges or loss or damage to business); *Fraser v Equatorial Shipping Co Ltd and Equatorial Lines Ltd, The Ijaola* [1979] 1 Lloyd's Rep 103, DC (where a consulting engineer was entitled to retain engine parts against advance payments because he had incurred personal liability by hiring sub-contractors). It is not necessary in the case of repairs effected under a contract that they should be completed before the right to retain possession accrues: *The Tergeste* [1903] P 26, 9 Asp MLC 356. A ship may be under the control and in possession of a repairer in a public dock: *The Rellim* (1922) 39 TLR 41. See also *Re Westlake, ex p Willoughby* (1881) 16 ChD 604; *Earle's Shipbuilding and Engineering Co v Aktieselskabet D/S Gefion and Forth Shipbuilding and Engineering Co* (1922) 10 Ll L Rep 305, CA. The mere fact that a repairer keeps some of his employees working on board, or leaves some of his plant or tools on board, after the vessel has left his premises does not, however, necessarily mean that he has retained such possession as will justify a possessory lien: see *The Scio* (1867) LR 1 A & E 353; *Olsen Ugelstad v GT Gray & Co* (1921) 9 Ll L Rep 565. See also *The Gregos* [1985] 2 Lloyd's Rep 347.

3 *Somes v British Empire Shipping Co* (1860) 8 HL Cas 338; *Thames Iron Works Co v Patent Derrick Co* (1860) 1 John & H 93. The holder of a possessory lien cannot voluntarily give up possession and still retain his rights as a possessory lien holder, nor has the court power to make a declaration to the contrary effect: *The Gaupen* (1925) 22 Ll L Rep 57; *The Ally* [1952] 2 Lloyd's Rep 427.

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(3) RANKING OF LIENS

1025. Priority of liens generally.

It would seem that the determination of the priority of liens over one another rests on no rigid application of any rules but on the principle that equity must be done to the parties in the circumstances of each particular case¹. There is, however, a general order of priority, and there are certain general rules which, in the absence of special circumstances, the court tends to apply. As to the general order of priority, the right of a dock and harbour authority exercising its powers under the Harbours, Docks, and Piers Clauses Act 1847², or under the similar provisions of its special Act, to detain a ship in respect of damage to dock works³, or to detain and sell a ship in respect of dock and harbour dues⁴, or to take possession of and sell a wreck in respect of conservancy charges⁵, overrides all maritime liens.

Next in order of priority are maritime liens; these usually rank above mortgages⁶ and statutory liens. A mortgage generally has precedence over a statutory lien. A possessory lien ranks after all liens which have attached before, and before all liens which attach after, the possessory lien holder has taken possession of the ship⁷.

1 *The Stream Fisher* [1927] P 73 at 82, 26 Ll L Rep 4 at 7; *The Elin* (1883) 8 PD 39, 5 Asp MLC 120 (on appeal 8 PD 129 at 130, 5 Asp MLC 120 at 122, CA, per Brett MR).

2 See PARA 1023.

3 *The Veritas* [1901] P 304, 9 Asp MLC 237; *Mersey Docks and Harbour Board v Hay, The Countess* [1923] AC 345 at 374, 16 Asp MLC 161 at 170, HL, per Lord Atkinson.

4 *The Emilie Millon* [1905] 2 KB 817, 10 Asp MLC 162, CA; *Mersey Docks and Harbour Board v Hay, The Countess* [1923] AC 345, 16 Asp MLC 161, HL; *Corps v Paddle Steamer Queen of the South (Owners) (Port of London Authority intervening)*, *The Queen of the South* [1968] P 449, [1968] 1 All ER 1163, [1968] 1 Lloyd's Rep 182. The exercise of a statutory power of sale is not within the ambit of priorities. Priorities are first considered after any reimbursement has taken place, and operate in relation to the residue, if any, paid into court to the ultimate benefit of claimants who have sufficient priority: *The Charger, British Transport Docks Board v Owners of Proceeds of Sale of SS or Vessels Charger, Probe, Vigia, Dideki, Surveyor, Constellation, Errol and Regency* [1966] 3 All ER 117 at 119, [1966] 1 Lloyd's Rep 670 at 672 per Karminski J (where a claim in respect of dock dues for priority over mortgagees against the proceeds of sale of ships by a harbour authority which had not exercised its power to detain and sell under the Harbours, Docks, and Piers Clauses Act 1847 s 44 (as to which see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 676) was rejected).

5 *The Sea Spray* [1907] P 133, 10 Asp MLC 462. In *The Veritas* [1901] P 304, 9 Asp MLC 237, it seems to have been admitted that the right was paramount and good against all the world including the holders of the maritime liens.

6 As to the priority of mortgagees see PARA 321.

7 As to the enforcement of liens see PARA 1037 et seq.

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1026. Priority of maritime liens generally.

Maritime liens are of two classes:

- 1164 (1) those arising ex delicto; and
- 1165 (2) those arising ex contractu or quasi ex contractu, such as wages, bottomry and salvage.

Although all maritime liens, whether arising ex delicto or ex contractu or quasi ex contractu, are the same¹, in practice they usually rank according to two broad principles. First, liens arising ex delicto, in the absence of laches, rank as between themselves *pari passu*², but in priority to liens arising ex contractu³, except a subsequent lien for salvage⁴. Secondly, as a general rule, maritime liens arising ex contractu or quasi ex contractu, that is to say those for master's wages, disbursements and liabilities, seamen's wages, bottomry⁵ and salvage, are payable in the inverse order of their attachment on the property in respect of which the claim is brought (or privilege claimed)⁶, although as between themselves masters' wages and seamen's wages rank *pari passu*⁷.

1 *The Stream Fisher* [1927] P 73 at 79, 26 Ll L Rep 4 at 6 per Bateson J.

2 *The Stream Fisher* [1927] P 73, 26 Ll L Rep 4.

3 *The Aline* (1839) 1 Wm Rob 111; *The Benares* (1850) 7 Notes of Cases, Supp 1; *The Linda Flor* (1857) Sw 309; *The Veritas* [1901] P 304, 9 Asp MLC 237.

4 *The Sea Spray* [1907] P 133, 10 Asp MLC 462; *The Inna* [1938] P 148, 60 Ll L Rep 414. See also *The Georg* [1894] P 330, 7 Asp MLC 476, and *The Elin* (1883) 8 PD 39, 5 Asp MLC 120 (on appeal 8 PD 129, 5 Asp MLC 120 at 122, CA), in which cases it seems to have been admitted by the damage claimants that they ranked after claimants for subsequent salvage.

5 *The Rhadamanthe* (1813) 1 Dods 201; cf *The Exeter* (1799) 1 Ch Rob 173 (where, although the bonds were given at different dates, they were paid pro rata on the grounds that the bonds had been given on one advertisement and the bondholders had acted in privity and concert). As to priority of several loans on bottomry see PARA 1030.

6 *The Hope* (1873) 1 Asp MLC 563. See also *The Veritas* [1901] P 304 at 312, 313, 9 Asp MLC 237 at 241 per Gorell Barnes J.

7 See PARA 1032.

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1027. Damage.

The lien for damage has priority over wages, whether earned before or after the collision¹, and over a prior bottomry bond, but not over a subsequent bottomry bond to the extent of the increased value of the vessel where the bond is given by a stranger who has advanced money for repairs². Such a lien also has priority over prior salvage³, but not over subsequent salvage services because they have preserved the property for the claimants in respect of damage⁴.

1 *The Linda Flor* (1857) Sw 309; *The Duna* (1861) 1 Mar LC 159; *The Elin* (1883) 8 PD 39, 5 Asp MLC 120 (on appeal 8 PD 129, 5 Asp MLC 120 at 122, CA); *The Chimera* (1852) cited in *The Elin* at 131. This rule applies even to the crews of foreign ships claiming for wages earned subsequently to the collision. It is not based on the rule as to priority of liens ex delicto (see PARA 1026), but on the Admiralty equitable doctrine that it is unjust to the owners of the damaged ship to allow the fund to be diminished by the payment of wages when the members of the crew have a remedy in personam, which the owners of the damaged ship may not have. The position may be different in the case of a bankrupt owner: see *The Linda Flor* at 310 per Dr Lushington.

2 *Harmer v Bell, The Bold Buccleugh* (1852) 7 Moo PCC 267 at 285; *The Aline* (1839) 1 Wm Rob 111 at 118. As to the ranking of damages liens, wages liens and liens secured under letters of undertaking see *Owners of the Caronnade v Owners of the Ruta; Harding (Owner of the Luta II) v Owners of the Luta* [2000] 1 All ER (Comm) 847, [2000] 1 WLR 2068, [2000] 1 Lloyd's Rep 359.

3 *The Veritas* [1901] P 304, 9 Asp MLC 237.

4 *A-G v Norstedt* (1816) 3 Price 97; *The Galam (Cargo ex)* (1863) Brown & Lush 167 at 181, PC; *The Elin* (1883) 8 PD 39, 5 Asp MLC 120 (on appeal 8 PD 129, 5 Asp MLC 120 at 122, CA); *The Sea Spray* [1907] P 133, 10 Asp MLC 462 (expenses of wreck-raising authority); *The Inna* [1938] P 148, 60 Ll L Rep 414. See also PARA 1026 note 4.

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1028. Several actions for damage arising against one ship.

Where several claimants seek to satisfy liens for damage against property in respect of which the claim is brought (or privilege claimed), whether arising out of the same collision or out of several collisions, their respective liens, in the absence of laches, rank *pari passu* without regard to the various times when they attached¹. This result is not affected by the fact that the various claimants obtain their decrees on different dates; the claimant who obtains the first decree is no longer in a specially privileged position, as in modern practice the decree is always made subject to any question of priorities being subsequently determined².

¹ *The Stream Fisher* [1927] P 73, 26 Ll L Rep 4.

² *The Stream Fisher* [1927] P 73 at 83, 26 Ll L Rep 4 at 8 per Bateson J; cf *The Africano* [1894] P 141, 7 Asp MLC 427; *The James W Elwell* [1921] P 351, 15 Asp MLC 418.

UPDATE

1029. Salvage.

Material relating to this paragraph has been revised and published under the title **NATIONAL AND CULTURAL HERITAGE** vol 77 (2010).

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1030. Bottomry.

Liens for bottomry¹ take precedence in the inverse order of the dates of execution² except that, where several bond-holders acting in privity and concert give bonds on different dates, the bonds will be paid pro rata³. A bottomry bond takes precedence over a master's lien for wages earned and disbursements incurred on a previous voyage to that during which the bottomry bond is given⁴, claims for the supply of goods, materials etc⁵, a mortgage made during the voyage upon which the bond was executed if enforced within a reasonable time⁶, prior salvage⁷ and over prior damage to the extent only of the increased value of the ship when the money has been advanced to effect the repair of such damage⁸.

It is postponed to the master's lien for wages earned and disbursements incurred after the date of the bond⁹, to seamen's wages, subsistence money and viaticum whenever earned¹⁰, to subsequent damage¹¹, and to subsequent salvage¹².

1 As to bottomry generally see PARAS 133, 437.

2 *The Rhadamanthe* (1813) 1 Dods 201; *The Sydney Cove* (1815) 2 Dods 1; *The Betsey* (1813) 1 Dods 289; *The Eliza* (1833) 3 Hag Adm 87.

3 *The Exeter* (1799) 1 Ch Rob 173.

4 *The Hope* (1873) 1 Asp MLC 563.

5 *The William F Safford* (1860) Lush 69 (this is so even though the claim has been pronounced for before the bond was put in suit). See also PARA 1033 note 1.

6 *The Royal Arch* (1857) Sw 269; *The Helgoland* (1859) Sw 491.

7 *The Selina* (1842) 2 Notes of Cases 18.

8 *The Aline* (1839) 1 Wm Rob 111 at 118.

9 *The Salcia* (1862) Lush 545; *The Hope* (1873) 1 Asp MLC 563 at 567.

10 *The Madonna d'Idra* (1811) 1 Dods 37 at 40; *The Union* (1860) Lush 128; *The Constancia* (1866) 15 WR 183; cf *The Jonathan Goodhue* (1859) Sw 524; *The Janet Wilson* (1857) Sw 261.

11 *The Aline* (1839) 1 Wm Rob 111.

12 *The William F Safford* (1866) Lush 69.

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1031. Master's lien for wages and disbursements.

The master's lien for wages and disbursements has priority over a bottomry bond given before the wages are earned¹ unless the master is personally liable on the bond², over salvage rendered before the wages were earned³, over a shipwright's possessory lien to the extent that the master's lien originated before the shipwright took possession⁴, and, where the master's lien has already attached, over the claim of a judgment creditor who is in possession of the property in respect of which the claim is brought (or privilege claimed), by reason of execution levied by the sheriff under a writ of fieri facias⁵, over the fees and expenses of a sheriff incurred in seizing a ship under a writ of fieri facias⁶, and over a mortgage⁷, unless the master has guaranteed payment of it⁸.

The master's lien for disbursements ranks on the same footing as his lien for wages⁹. Claims by successive masters for disbursements rank *pari passu*, and not in the inverse order of their attachment on the property in respect of which the claim is brought (or privilege claimed)¹⁰.

The master's claim for wages ranks *pari passu* with the seamen's claim for wages¹¹; but the master's lien is postponed to a bottomry bond given after the wages earned¹², to subsequent salvage¹³, to damage¹⁴, and, when the master is part owner and ordered the repairs or gave the instructions, to the claim of a person who has supplied goods, materials etc¹⁵, and to a solicitor's lien for costs¹⁶.

1 *The Salacia* (1862) Lush 545. See also *The Hope* (1873) 1 Asp MLC 563 at 567.

2 *The William* (1858) Sw 346; *The Jonathan Goodhue* (1859) Sw 524.

3 *The Selina* (1842) 2 Notes of Cases 18; *The Mons* [1932] P 109, 43 Ll L Rep 151.

4 *The Gustaf* (1862) Lush 506; *The Immacolata Concezione* (1883) 9 PD 37, 5 Asp MLC 208; *The Tergeste* [1903] P 26, 9 Asp MLC 356 (the lien for wages includes subsistence money and viaticum).

5 *The James W Elwell* [1921] P 351, 15 Asp MLC 418. As to writs of fieri facias generally see **CIVIL PROCEDURE** vol 12 (2009) PARA 1266 et seq.

6 *The Ile de Ceylan* [1922] P 256, 16 Asp MLC 23.

7 *The Feronia* (1868) LR 2 A & E 65; *The Tagus* [1903] P 44, 9 Asp MLC 371. The master of a foreign ship has priority in England for all his wages and disbursements, even though by the *lex loci* his rights are limited to the debts incurred on the last voyage; he is also entitled in respect of wages as a seaman whilst acting as supercargo, and for disbursements made to crew on account of wages: *The Tagus*.

8 *The Bangor Castle* (1896) 8 Asp MLC 156.

9 *The Mons* [1932] P 109, 43 Ll L Rep 151.

10 *The Mons* [1932] P 109, 43 Ll L Rep 151.

11 *The Royal Wells* [1985] QB 86, [1984] 3 All ER 193, [1984] 2 Lloyd's Rep 255.

12 *The Hope* (1873) 1 Asp MLC 563.

13 *The Selina* (1842) 2 Notes of Cases 18; *The Mons* [1932] P 109, 43 Ll L Rep 151.

14 *The Linda Flor* (1857) Sw 309; *The Panthea* (1871) 1 Asp MLC 133; *The Elin* (1883) 8 PD 39, 5 Asp MLC 120 (on appeal 8 PD 129, 5 Asp MLC 120 at 122, CA).

15 *The Jenny Lind* (1872) LR 3 A & E 529, 1 Asp MLC 294; *The Eva* [1921] P 454, 15 Asp MLC 424. See also PARA 1033 note 1.

16 *The Heinrich* (1872) LR 3 A & E 505, 1 Asp MLC 260.

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1032. Seamen's lien for wages.

The seamen's lien for wages takes priority over a bottomry bond whenever given¹, over the claim of a mortgagee², over a claim for goods, materials etc supplied to the ship³, over towage⁴, and over a shipwright's possessory lien to the extent of the wages earned up to the time the vessel is put into the hands of the shipwright⁵; but their claim for wages ranks *pari passu* with the master's claim for wages⁶.

The seamen's lien is postponed to a damage lien⁷, to salvage rendered after the wages are earned⁸, to a shipwright's lien from the time he had possession⁹, and to the claim of a dock or harbour authority in respect of dock and harbour dues¹⁰, damage to dock or harbour works¹¹ or conservancy charges for the removal of wrecks and other obstructions¹².

1 *The Madonna d'Idra* (1811) 1 Dods 37 at 40; *The Sydney Cove* (1815) 2 Dods 11; *The Union* (1860) Lush 128; *The William F Safford* (1860) Lush 69; cf *The Jonathan Goodhue* (1859) Sw 524; *The Janet Wilson* (1857) Sw 261.

2 *The Prince George* (1837) 3 Hag Adm 376.

3 *The Queen (No 2)* (1869) 19 LT 706.

4 *The Andalina* (1886) 12 PD 1, 6 Asp MLC 62.

5 *The Immacolata Concezione* (1883) 9 PD 37, 5 Asp MLC 208 (the lien for wages includes subsistence money and viaticum); *The Tergeste* [1903] P 26, 9 Asp MLC 356.

6 *The Royal Wells* [1985] QB 86, [1984] 3 All ER 193, [1984] 2 Lloyd's Rep 255.

7 *The Benares* (1850) 7 Notes of Cases, Supp 1; *The Linda Flor* (1857) Sw 309; *The Elin* (1883) 8 PD 39, 5 Asp MLC 120 (on appeal 8 PD 129 at 130, 5 Asp MLC 120 at 122, CA).

8 *The Sabina* (1842) 7 Jur 182 (and see apparently the same case reported as *The Selina* (1842) 2 Notes of Cases 18); *The Gustaf* (1862) Lush 506. The priority of wages earned after a salvage service does not seem to have been determined. In *The Mons* [1932] P 109, 43 Ll L Rep 151, the order of priority was expressly stated to be in accordance with an admission by the salvors.

9 *The Gustaf* (1862) Lush 506; *The Immacolata Concezione* (1883) 9 PD 37, 5 Asp MLC 208; *The Tergeste* [1903] P 26, 9 Asp MLC 356.

10 *The Emilie Millon* [1905] 2 KB 817, 10 Asp MLC 162, CA (a dock company which is authorised to detain a ship until the rates are paid can do so notwithstanding that there are maritime liens on the ship before she entered the dock); *Mersey Docks and Harbour Board v Hay, The Countess* [1923] AC 345, 16 Asp MLC 161, HL; *The Charger, British Transport Docks Board v Owners of Proceeds of Sale of SS or Vessels Charger, Probe, Vigia, Dideki, Surveyor, Constellation, Errol and Regency* [1966] 3 All ER 117, [1966] 1 Lloyd's Rep 670 (where a claim for priority in respect of dock dues by a harbour authority which had not exercised its power to sell a vessel under the Harbours, Docks, and Piers Clauses Act 1847 s 44 (as to which see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 676) was rejected). See PARA 1025.

11 *The Veritas* [1901] P 304, 9 Asp MLC 237; *Mersey Docks and Harbour Board v Hay, The Countess* [1923] AC 345, 16 Asp MLC 161, HL.

12 *The Sea Spray* [1907] P 133, 10 Asp MLC 462.

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1033. Supply of goods, materials etc.

The statutory lien for the supply of goods and materials to, and the repair of, a ship and disbursements made by a master, shipper, charterer or agent on account of a ship¹ as a general rule ranks after maritime liens but takes priority over a master's lien for wages and disbursements when supplied by the order of a master who is part owner of the ship². It is postponed to a mortgage³, to execution creditors at whose instance the sheriff has seized the property in respect of which the claim is brought (or privilege claimed) before the person supplying the goods, materials etc has arrested it⁴, and to the solicitor's costs in defending an action brought against the ship before the goods etc were supplied⁵.

Where there are several claims for the supply of goods, materials etc, they rank equally and are paid pro rata, provided that the holder of the lien is not guilty of laches in prosecuting his claim, because, when a ship is sold, the court holds the property not only for the first claimant but for all creditors of the same class who assert their claims before an unconditional decree is pronounced⁶. A claimant who supplies goods, materials etc to a ship which is already under arrest obtains no right to priority over other claimants for such supply, unless the goods, materials etc which he supplies are supplied with the sanction of the court⁷. The mere fact that claimants who have maritime liens (and thus have an interest in the preservation of the property in respect of which the claim is brought or privilege claimed) are benefited by the supply of goods, materials etc is not enough to give those claiming for the supply of goods, materials etc priority over those with maritime liens⁸. Nor will those claiming for the supply of goods, materials etc secure priority merely because their services have increased the value of the property⁹.

1 See the Supreme Court Act 1981 s 20(2)(m), (n), (p); and PARAS 126, 127. The term 'necessaries' used to describe similar claims in earlier legislation (see eg the Supreme Court of Judicature (Consolidation) Act 1925 s 22(1)(a)(vii) (repealed)) is not used in the Supreme Court Act 1981. For a definition of 'necessaries' see *The Riga* (1872) LR 3 A & E 516, 1 Asp MLC 246. See also *The River Rima* [1987] 3 All ER 1, [1987] 2 Lloyd's Rep 106, CA; affd [1988] 2 All ER 641, [1988] 1 WLR 758, [1988] 2 Lloyd's Rep 193, HL. The supply of goods and materials to and the repair of a ship do not confer a maritime lien: *The Two Ellens* (1872) LR 4 PC 161; *Northcote v The Henrich Björn (Owners)*, *The Henrich Björn* (1886) 11 App Cas 270, 6 Asp MLC 1, HL; *The Cella* (1888) 13 PD 82, CA; *The James W Elwell* [1921] P 351, 15 Asp MLC 418.

2 *The Jenny Lind* (1872) LR 3 A & E 529, 1 Asp MLC 294; *The Eva* [1921] P 454, 15 Asp MLC 424. As to merger of claim for necessities in a bottomry bond see *The Elpis* (1872) LR 4 A & E 1, 1 Asp MLC 472.

3 *The Scio* (1867) LR 1 A & E 353; *The Zigurds* [1932] P 113, 18 Asp MLC 324 (where the mortgagee had priority over foreign necessities men, ship repairers and stevedores). Where the mortgage is a foreign one, even though by the foreign law the claim for the supply of goods etc would be preferred, nevertheless in an English action the claim for the supply of goods etc will be postponed, since the law to be applied in distributing the proceeds is the lex fori: *The Colorado* [1923] P 102, 16 Asp MLC 145, CA; *Bankers Trust International Ltd v Todd Shipyards Corpn*, *The Halcyon Isle* [1981] AC 221, [1980] 3 All ER 197, PC. As to the lex fori see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 11.

4 *The James W Elwell* [1921] P 351, 15 Asp MLC 418.

5 *The Heinrich* (1872) LR 3 A & E 505, 1 Asp MLC 260.

6 *The Africano* [1894] P 141, 7 Asp MLC 427; *The James W Elwell* [1921] P 351, 15 Asp MLC 418.

7 *The Rene* (1922) 16 Asp MLC 24; cf *The Zigurds* [1932] P 113 at 129, 18 Asp MLC 324 at 330.

8 *The Russland* [1924] P 55, 16 Asp MLC 288.

9 *The Zigurds* [1932] P 113, 18 Asp MLC 324.

UPDATE

1033 Supply of goods, materials etc

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/11. LIENS ON SHIPS, FREIGHT AND CARGO/(3) RANKING OF LIENS/1034. Possessory lien.

1034. Possessory lien.

Possessory liens take priority over all claims arising after the ship is taken into possession, but are postponed to those liens which were created before that time, as the holder of the lien is presumed to have taken the ship into his possession with the obligations then upon her¹. The mere fact that claimants with maritime liens have benefited by the work of the repairers is not, however, a sufficient reason why those maritime liens should be postponed to the repairers' possessory lien². The statutory possessory lien of a dock or harbour authority overrides all maritime liens³.

1 *The Gustaf* (1862) Lush 506 (salvage); *The Immacolata Concezione* (1883) 9 PD 37, 5 Asp MLC 208 (wages, subsistence money and viaticum); *The Tergeste* [1903] P 26, 9 Asp MLC 356 (wages, subsistence money and viaticum). Possessory liens (also sometimes described as common law liens) are now usually referred to as legal liens: see **LIEN** vol 68 (2008) PARAS 802, 817 et seq.

2 *The Russland* [1924] P 55 at 59, 16 Asp MLC 288 at 291 per Hill J; cf *The Aline* (1839) 1 Wm Rob 111 at 118.

3 *Mersey Docks and Harbour Board v Hay, The Countess* [1923] AC 345, 16 Asp MLC 161, HL. See also PARA 1025.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/11. LIENS ON SHIPS, FREIGHT AND CARGO/(3) RANKING OF LIENS/1035. Solicitor's lien for costs.

1035. Solicitor's lien for costs.

The solicitor's lien¹ for costs takes priority over claims for goods, materials etc supplied after the inception of the lien², and to the master's claim for wages when he is part owner and has instructed the solicitor³. It is postponed to the expense of sending home a shipwrecked foreign crew incurred by a foreign consul⁴.

1 This lien is given by the Solicitors Act 1974 s 73: see **LEGAL PROFESSIONS** vol 66 (2009) PARA 1011 et seq. As to the duties of the Admiralty court in making charging orders see *The Birnam Wood* [1907] P 1, 10 Asp MLC 325, CA (decided on similar provisions of the Solicitors Act 1860 s 28 (repealed)).

2 *The Soblomsten* (1866) LR 1 A & E 293; *The Heinrich* (1872) LR 3 A & E 505, 1 Asp MLC 260; and see PARA 1033 note 1.

3 *The Heinrich* (1872) LR 3 A & E 505, 1 Asp MLC 260.

4 *The Constancia* (1866) 15 WR 183; *The Livietta* (1883) 8 PD 209 at 213, 5 Asp MLC 151 at 153.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/11. LIENS ON SHIPS, FREIGHT AND CARGO/(3) RANKING OF LIENS/1036. Mode of determination of claims.

1036. Mode of determination of claims.

While the rights of claimants may be determined by the *lex loci* or the law of the flag of the ship, all questions of priority of liens or claims are determined in England by the *lex fori*¹.

¹ *The Union* (1860) Lush 128; *The Tagus* [1903] P 44, 9 Asp MLC 371; *The Colorado* [1923] P 102, 16 Asp MLC 145, CA; *The Zigurds* [1932] P 113, 18 Asp MLC 324 (revsd on another point [1933] P 87, CA; affd sub nom *Smith v Zigurds SS Owners and EA Casper, Edgar & Co Ltd* [1934] AC 209, 18 Asp MLC 475, HL). As to the *lex fori* see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 11. See also **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 24.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/11. LIENS ON SHIPS, FREIGHT AND CARGO/(4) ENFORCEMENT AND EXTINCTION OF LIENS/1037. Enforcement of maritime liens.

(4) ENFORCEMENT AND EXTINCTION OF LIENS

1037. Enforcement of maritime liens.

Maritime liens are enforced by a proceeding in rem¹, followed by the arrest, and if necessary by the sale, of the property in respect of which the claim is brought (or privilege claimed)². To enforce such a lien, a court having Admiralty jurisdiction will seize the ship and forcibly dispossess those who claim to detain her or her apparel³. The court will seize and sell a ship even though she is in the possession of the holder of a possessory lien⁴ or the sheriff at the instance of execution creditors⁵. Out of the proceeds of the sale the various claimants will be satisfied according to such rules of priority as are applicable to the case⁶, the holder of the possessory lien retaining such rights of priority as he had while in possession⁷ and the rights of the execution creditors being enforced⁸. Where the property in question belongs to a company registered in England and Wales which is being wound up by the court, that property may not be arrested after the commencement of the winding up⁹; and the proper procedure for enforcing a maritime lien in such an instance is by proceeding in the winding up, in which the maritime lien will have the same priority over other debts as if proceedings had been instituted in rem¹⁰.

1 See the Supreme Court Act 1981 s 21(3); and PARA 93.

2 *Harmer v Bell, The Bold Buccleugh* (1852) 7 Moo PCC 267.

3 *The Harmonie* (1841) 1 Wm Rob 178.

4 *The Gustaf* (1862) Lush 506; *The Immacolata Concezione* (1883) 9 PD 37, 5 Asp MLC 208; *The Tergeste* [1903] P 26, 9 Asp MLC 356. Possessory liens (also sometimes described as common law liens) are now usually referred to as legal liens: see **LIEN** vol 68 (2008) PARAS 802, 817 et seq.

5 *The James W Ewell* [1921] P 351, 15 Asp MLC 418.

6 Even in the case of insolvency, maritime liens retain their priority over other debts: *The Orelia* (1833) 3 Hag Adm 75 at 83 per Sir John Nicholl.

7 *The Gustaf* (1862) Lush 506; *The Immacolata Concezione* (1883) 9 PD 37, 5 Asp MLC 208; *The Tergeste* [1903] P 26, 9 Asp MLC 356.

8 *The James W Ewell* [1921] P 351, 15 Asp MLC 418.

9 See **COMPANIES** vol 14 (2009) PARA 408.

10 *Re Australian Direct Steam Navigation Co* (1875) LR 20 Eq 325. The arrest of a vessel is not an execution against the goods of a company within the meaning of the Insolvency Act 1986 s 183 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 882); and a person who already has notice of a meeting at which a resolution for the voluntary winding up of a company is to be proposed may become a secured creditor by arresting a ship in an action in rem and is entitled to the benefit of such arrest as against the liquidator subsequently appointed: *John Carlbon & Co Ltd v Zafiro (Owners), The Zafiro* [1960] P 1, [1959] 2 All ER 537, [1959] 1 Lloyd's Rep 359.

UPDATE

1037 Enforcement of maritime liens

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/11. LIENS ON SHIPS, FREIGHT AND CARGO/(4) ENFORCEMENT AND EXTINCTION OF LIENS/1038. Transfer of maritime liens.

1038. Transfer of maritime liens.

As a general rule, maritime liens (other than the lien for bottomry¹) are not transferable²; but a court having Admiralty jurisdiction has in some cases allowed persons who have, with the sanction of the court, paid off claims against a ship to have the same advantages as to priorities as the person had whose claim they have satisfied³. A foreign consul may in the name of his government have certain rights against a fund in court for the recovery of the expenses of repatriating seamen⁴; but a person who advances money to salvors has no lien on an award⁵.

1 *The Rebecca* (1804) 5 Ch Rob 102 at 104; *The Catherine* (1847) 3 Wm Rob 1 at 2. As to the lien for bottomry see PARA 1030.

2 *The Petone* [1917] P 198, 14 Asp MLC 283. As to the restrictions on forfeiture or assignment of seamen's wages and on his right to salvage see PARAS 471, 476.

3 In some early cases, persons who had paid off claims without the sanction of the court were allowed to avail themselves of the priority enjoyed by those whose claims they had satisfied. In *The Cornelia Henrietta* (1866) LR 1 A & E 51, Dr Lushington laid down the rule that these payments must be made with the sanction of the court if the priority of the claim satisfied was to be claimed by the person satisfying the claim. Hill J exhaustively reviewed all the previous authorities in *The Petone* [1917] P 198, 14 Asp MLC 283, and in view of this judgment it would appear that the cases where parties paid on claims without the sanction of the court and then availed themselves of the priority enjoyed by the person whose claim had been satisfied would no longer be followed. As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq.

4 *The Livietta* (1883) 8 PD 209, 5 Asp MLC 132.

5 *The Louisa* (1848) 3 Wm Rob 99.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/11. LIENS ON SHIPS, FREIGHT AND CARGO/(4) ENFORCEMENT AND EXTINCTION OF LIENS/1039. Enforcement of statutory liens.

1039. Enforcement of statutory liens.

Statutory liens which owe their inception to a proceeding in rem and the arrest of maritime property are enforced by sale of that property, subject to the same conditions as apply to the satisfaction of maritime liens¹.

¹ *The Cella* (1888) 13 PD 82, 6 Asp MLC 293, CA; *John Carlbon & Co Ltd v Zafiro (Owners), The Zafiro* [1960] P 1, [1959] 2 All ER 537, [1959] 1 Lloyd's Rep 359.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/11. LIENS ON SHIPS, FREIGHT AND CARGO/(4) ENFORCEMENT AND EXTINCTION OF LIENS/1040. Enforcement of possessory liens.

1040. Enforcement of possessory liens.

The holder of a possessory lien¹ cannot enforce it by sale, but may only continue to hold the property until his claims are paid, even though to do so entails expense². If, however, he is dispossessed by a court having Admiralty jurisdiction³, then out of the proceeds of the ship he will be paid his claim according to the rules as to priorities⁴.

1 Possessory liens (also sometimes described as common law liens) are now usually referred to as legal liens: see **LIEN** vol 68 (2008) PARAS 802, 817 et seq.

2 *Thames Iron Works Co v Patent Derrick Co* (1860) 1 John & H 93; *Somes v British Empire Shipping Co* (1860) 8 HL Cas 338; *Mulliner v Florence* (1878) 3 QBD 484, CA; *The Gaupen* (1925) 22 Ll L Rep 57; *The Ally* [1952] 2 Lloyd's Rep 427; *Smith's Dock Co Ltd v St Merriel (Owners), The St Merriel* [1963] P 247, [1963] 1 All ER 537, [1963] 1 Lloyd's Rep 63.

3 As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq.

4 *The Gustaf* (1862) Lush 506; *The Immacolata Concezione* (1883) 9 PD 37, 5 Asp MLC 208; *The Tergeste* [1903] P 26, 9 Asp MLC 356. As to the ranking of liens generally see PARA 1025 et seq.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/11. LIENS ON SHIPS, FREIGHT AND CARGO/(4) ENFORCEMENT AND EXTINCTION OF LIENS/1041. Extinction of liens.

1041. Extinction of liens.

Claims to enforce liens are liable to be statute-barred. No action is normally maintainable to enforce a lien against a ship or her owners in respect of damage or loss caused by the fault of that ship to another ship, its cargo or freight or any property on board her, or for damages for loss of life or personal injury caused by the fault of that ship to any person on board another ship, unless proceedings are brought within the period of two years from the date when the damage or loss was caused or the loss of life or injury was suffered¹. In certain cases, the court may, however, extend the time limit for bringing such proceedings².

Maritime liens, other than those for collisions between vessels and salvage and for seamen's wages, are not limited to any time for enforcement, but travel with the ship into whosoever possession she may come³, but may be lost through lack of reasonable diligence in enforcing them⁴.

A maritime or statutory lien is extinguished by giving bail or a guarantee to prevent the arrest or secure the release of the property in an action to enforce the lien⁵, by the arrest and sale of the ship in an action in rem by a court of competent jurisdiction, whether English or foreign⁶, by assignment without the sanction of the court⁷, and by failure to bring the claim arising from it within the time ordained by the court in limitation proceedings⁸.

Possessory liens are extinguished by payment, by yielding up possession, or by arrest of the ship by a court of competent authority⁹.

1 See the Merchant Shipping Act 1995 s 190(1), (3); and PARA 1063. As to the application of s 190 to Crown ships see PARA 1065.

2 See the Merchant Shipping Act 1995 s 190(5), (6); and PARA 1063.

3 *Harmer v Bell, The Bold Buccleugh* (1852) 7 Moo PCC 267; *The Charles Amelia* (1868) LR 2 A & E 330; *Johnson v Black, The Two Ellens* (1872) LR 4 PC 161, 1 Asp MLC 208; *The Kong Magnus* [1891] P 223, 7 Asp MLC 64; *The Goulandris* [1927] P 182, 17 Asp MLC 209; and see PARA 1014.

4 *The Jacob* (1802) 4 Ch Rob 245 (bottomry); *The Rebecca* (1804) 5 Ch Rob 102 (bottomry); *The Royal Arch* (1857) Sw 269 (bottomry); *The Fairport* (1882) 8 PD 48, 5 Asp MLC 62 (master's disbursements).

5 The effect of giving bail is to release the property in respect of which the claim is brought (or privilege claimed) altogether from the action: *The Kalamazoo* (1851) 15 Jur 885; *The Wild Ranger* (1863) Brown & Lush 84; *The Joannis Vatis (No 2)* [1922] P 213, 16 Asp MLC 13; *The Point Breeze* [1928] P 135, 17 Asp MLC 462; and see PARAS 171, 172.

6 *The Charles Amelia* (1868) LR 2 A & E 330; *Castrique v Imrie* (1870) LR 4 HL 414. Where a ship was sold under the authority of the Egyptian court by the assignees of a bankrupt owner, the sale was held not to be the equivalent to a sale in an action in rem but was a sale 'cum onere', and the maritime lien which had previously attached in respect of salvage services was held not to have been extinguished by the sale: *The Goulandris* [1927] P 182, 17 Asp MLC 209.

7 *The Petone* [1917] P 198, 14 Asp MLC 283.

8 The court may, however, in its discretion allow such a claim to be proved after the time fixed, but before the court has distributed the fund: *The Zoe* (1886) 11 PD 72, 5 Asp MLC 583.

9 *The Scio* (1867) LR 1 A & E 353; *Re Westlake, ex p Willoughby* (1881) 16 ChD 604. See also PARA 1024. Possessory liens (also sometimes described as common law liens) are now usually referred to as legal liens: see **LIEN** vol 68 (2008) PARAS 802, 817 et seq.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/12. LIMITATION OF LIABILITY OF SHIPOWNERS ETC/(1) IN GENERAL/(i) Provision Made for Limitation of Liability/1042. The Convention on Limitation of Liability for Maritime Claims.

12. LIMITATION OF LIABILITY OF SHIPOWNERS ETC

(1) IN GENERAL

(i) Provision Made for Limitation of Liability

1042. The Convention on Limitation of Liability for Maritime Claims.

The provisions of the Convention on Limitation of Liability for Maritime Claims¹ (the 'Convention') have the force of law² in the United Kingdom³. They apply in relation to Her Majesty's ships as they apply in relation to other ships⁴; but they do not apply to any liability in respect of loss of life or personal injury caused to, or loss of or damage to any property of, a person who is on board the ship⁵ in question or employed in connection with that ship or with the salvage operations⁶ in question if⁷: (1) he is so on board or employed under a contract of service governed by the law of any part of the United Kingdom⁸; and (2) the liability arises from an occurrence which took place on or after 1 January 1996⁹.

1 The Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARA 1043 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARA 1043 et seq), as the 'Convention': see s 185(1). The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II: s 185(2).

Her Majesty may by Order in Council make such modifications of Sch 7 Pt I and Sch 7 Pt II as She considers appropriate in consequence of the revision of the Convention by the Protocol (2 May 1996) amending the Convention (the '1996 Protocol'): Merchant Shipping Act 1995 s 185(2A) (s 185(2A)-(2E) added by the Merchant Shipping and Maritime Security Act 1997 s 15(1)). If it appears to Her Majesty in Council that the government of the United Kingdom has agreed to any further revision of the Convention or to any revision of the 1996 Protocol art 8, She may by Order in Council make such modifications of the Merchant Shipping Act 1995 Sch 7 Pt I and Sch 7 Pt II, and of s 185(2C), (2D), as She considers appropriate in consequence of the revision: s 185(2B) (as so added). A draft of an Order in Council proposed to be made by virtue of s 185(2A) or s 185(2B) is not to be submitted to Her Majesty in Council unless it has been approved by a resolution of each House of Parliament: s 185(5) (added by the Merchant Shipping and Maritime Security Act 1997 s 15(2)). As to Orders so made see the Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) (Amendment) Order 1998, SI 1998/1258; and the Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) (Amendment) Order 2004, SI 2004/1273.

The Secretary of State may by order make such amendments of the Merchant Shipping Act 1995 Sch 7 Pt I and Sch 7 Pt II as appear to him to be appropriate for the purpose of giving effect to any amendment of a relevant limit which is adopted in accordance with the 1996 Protocol art 8: Merchant Shipping Act 1995 s 185(2C) (as so added). For these purposes, a 'relevant limit' means any of the limits for the time being specified in either of the following provisions of the Convention, namely art 6(1) and art 7(1): Merchant Shipping Act 1995 s 185(2D) (as so added). No modification made by virtue of s 185(2A), (2B) or (2C) may affect any rights or liabilities arising out of an occurrence which took place before the day on which the modification comes into force: s 185(2E) (as so added). At the date at which this volume states the law, no such order had been made under s 185(2C)-(2E). As to the Secretary of State see PARA 38; and as to the making of orders by the Secretary of State under the Merchant Shipping Act 1995 generally see PARA 41.

2 As to the meaning of 'having the force of law' cf *The Hollandia* [1983] 1 AC 565, [1982] 3 All ER 1141, sub nom *The Morviken* [1983] 1 Lloyd's Rep 1, HL.

3 Merchant Shipping Act 1995 s 185(1). As to the meaning of 'United Kingdom' see PARA 17 note 3. The Convention on Limitation of Liability for Maritime Claims does not limit the jurisdiction of the Admiralty Court,

which is governed by the Supreme Court Act 1981: see *Vessel SA v CP Ships (UK) Ltd, sub nom Denise (The Owners) v The Denise (Charterers)*[2004] EWHC 3305 (Admlty), [2005] 2 All ER (Comm) 47 (owner was entitled to invoke the jurisdiction of the court to seek a decree of limitation even in circumstances where there was no claim (as yet) brought against it in the jurisdiction). As to the Admiralty jurisdiction of the High Court of Justice generally see PARA 85 et seq.

An Order in Council made for the purposes of the Merchant Shipping Act 1995 Sch 7 Pt II para 13 and declaring that any state specified in the Order is a party to the Convention as amended by the 1996 Protocol is conclusive evidence, subject to the provisions of any subsequent Order made for those purposes, that the state is a party to the Convention as amended by the 1996 Protocol: Merchant Shipping Act 1995 Sch 7 Pt II para 13 (substituted by SI 1998/1258). A statutory instrument containing an Order in Council under the Merchant Shipping Act 1995 Sch 7 Pt II para 13 is not subject to annulment in pursuance of a resolution of either House of Parliament: see s 306(3); and PARA 41. However, at the date at which this volume states the law, no such Order in Council had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Limitation of Liability for Maritime Claims (Parties to Convention) Order 1986, SI 1986/2224, has effect as if so made.

Nothing in the Pilotage Act 1987 s 22(3) or (4) (see PARA 584) affects any liability which may be limited under the Merchant Shipping Act 1995 s 185 (see the Pilotage Act 1987 s 22(7); and PARA 584); nor does anything in the Convention relating to the Carriage of Passengers and their Luggage by Sea (Athens, 13 December 1974; TS 40 (1987); Cm 202) affect the operation of the Merchant Shipping Act 1995 s 185 (see Sch 6 Pt II para 12; and **CARRIAGE AND CARRIERS**).

4 Merchant Shipping Act 1995 s 185(3). As to the meaning of 'ship' see PARA 229. As to the meaning of 'Her Majesty's ships' see the Crown Proceedings Act 1947 s 38(2); and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 103. As to the application of the Merchant Shipping Act 1995 s 185 to the Crown and its ships see PARA 1065.

5 For this purpose, 'ship' has the same meaning as in the Convention (see PARA 1043 note 2): see the Merchant Shipping Act 1995 s 185(4).

6 For these purposes, 'salvage operations' has the same meaning as in the Convention (see PARA 1043 note 3): see the Merchant Shipping Act 1995 s 185(4).

7 Merchant Shipping Act 1995 s 185(4).

8 Merchant Shipping Act 1995 s 185(4)(a). Although historically employment law originated in what was termed the law of master and servant, the modern terminology adopted is that of 'employer' and 'employee'; and 'contract of employment' is used rather than the older phrase 'contract of service' (save that the latter phrase is still used in social security and related legislation): see **EMPLOYMENT** vol 39 (2009) PARA 1.

9 Merchant Shipping Act 1995 s 185(4)(b). The date of 1 January 1996 is that on which the Merchant Shipping Act 1995 was commenced: see s 316(2).

UPDATE

1042 The Convention on Limitation of Liability for Maritime Claims

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/12. LIMITATION OF LIABILITY OF SHIPOWNERS ETC/(1) IN GENERAL/(ii) Convention on Limitation of Liability for Maritime Claims/A. RIGHT OF LIMITATION UNDER THE CONVENTION/1043. Persons entitled to limit liability under the Convention.

(ii) Convention on Limitation of Liability for Maritime Claims

A. RIGHT OF LIMITATION UNDER THE CONVENTION

1043. Persons entitled to limit liability under the Convention.

Under the Convention on Limitation of Liability for Maritime Claims¹, shipowners² and salvors³ may limit their liability⁴ for claims that the Convention makes subject to limitation⁵. If any such claims are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person is entitled to avail himself of the limitation of liability provided for in the Convention⁶.

An insurer of liability for claims subject to limitation⁷ is entitled to the benefits of the Convention to the same extent as the assured himself⁸.

The act of invoking limitation of liability does not constitute an admission of liability⁹.

1 The Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARA 1044 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARA 1044 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 For these purposes, 'shipowner' means the owner, charterer, manager or operator of a sea-going ship: Convention on Limitation of Liability for Maritime Claims art 1(2). References in the Convention and in the Merchant Shipping Act 1995 s 185(2), Sch 7 Pt II paras 1-10 (see PARA 1044 et seq) to a ship include references to any structure, whether completed or in course of completion, launched and intended for use in navigation as a ship or part of a ship: see Sch 7 Pt II para 12.

3 For these purposes, 'salvor' means any person rendering services in direct connection with salvage operations; and 'salvage operations' also includes operations referred to in art 2(1)(d), (e), (f) (see PARA 1044): art 1(3).

4 In accordance with the rules of the Convention (see PARA 1044 et seq): art 1(1).

5 Convention on Limitation of Liability for Maritime Claims art 1(1). The claims that are made subject to limitation under the Convention are set out in art 2 (see PARA 1044): see art 1(1).

The right to limit liability under the Convention applies in relation to any ship whether sea-going or not; and the meaning of 'shipowner' in art 1(2) (see note 2) is to be construed accordingly: Merchant Shipping Act 1995 Sch 7 Pt II paras 1, 2 (Sch 7 Pt II para 2 amended by SI 1998/1258). The Merchant Shipping Act 1995 Sch 7 Pt II para 2 is subject to Sch 7 Pt II para 6 (see PARA 1049): see Sch 7 Pt II para 2 (as so amended). In the Convention, the liability of a shipowner includes liability in an action brought against the vessel herself: art 1(5).

A charterer's ability to limit liability pursuant to the Merchant Shipping Act 1995 depends on the type of claim that is brought against him rather than the capacity in which he was acting when his liability arose: *CMA CGM SA v Classica Shipping Co Ltd* [2004] EWCA Civ 114, [2004] 1 All ER (Comm) 865, [2004] 1 Lloyd's Rep 460. See also *Blue Nile Shipping Co Ltd v Iguana Shipping and Finance Inc* [2004] EWHC 1506 (Admlty), [2004] 2 Lloyd's Rep 469, [2004] All ER (D) 305 (Jun) (it mattered not that it was the owners who were seeking to limit against claims brought by charterers rather than the other way around; the issue turned on the scope of the claims that were subject to limitation and not the class of persons entitled to limit).

- 6 Convention on Limitation of Liability for Maritime Claims art 1(4).
- 7 le in accordance with the rules of the Convention (see PARA 1044 et seq): art 1(6).
- 8 Convention on Limitation of Liability for Maritime Claims art 1(6).
- 9 Convention on Limitation of Liability for Maritime Claims art 1(7).

UPDATE

1043 Persons entitled to limit liability under the Convention

NOTE 5--See *Metvale Ltd v Monsanto International Srl, The MSC Napoli* [2008] EWHC 3002 (Admlty), [2009] 1 All ER (Comm) 1158 (slot charterer within definition of shipowner and entitled to limit liability).

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1044. Claims subject to limitation under the Convention.

Under the Convention on Limitation of Liability for Maritime Claims¹, the following claims, whatever the basis of liability may be, may be subject to limitation of liability²:

- 1166 (1) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship³ or with salvage operations⁴, and consequential loss resulting therefrom⁵;
- 1167 (2) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage⁶;
- 1168 (3) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations⁷;
- 1169 (4) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship⁸;
- 1170 (5) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship⁹;
- 1171 (6) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with the Convention, and further loss caused by such measures¹⁰.

Claims set out in heads (1) to (6) above may be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise¹¹. Claims set out in heads (4) to (6) above may not, however, be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable¹².

1 The Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARAS 1043, 1045 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARAS 1043, 1045 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 Convention on Limitation of Liability for Maritime Claims art 2(1). Article 2(1) is subject to art 3 (claims excepted from limitation) (see PARA 1045) and art 4 (see PARA 1046) (conduct barring limitation): see art 2(1). See *Blue Nile Shipping Co Ltd v Iguana Shipping and Finance Inc* [2004] EWHC 1506 (Admlty), [2004] 2 Lloyd's Rep 469, [2004] All ER (D) 305 (Jun) (cited in PARA 1043 note 5).

3 As to the meaning of references to a ship see PARA 1043 note 2. The loss of the ship itself is not a loss of property 'occurring . . . in direct connection with the operation of the ship' for the purposes of the Convention on Limitation of Liability for Maritime Claims art (2)1(a): *Aegean Sea Traders Corp v Repsol Petroleo SA* [1998] 2 Lloyd's Rep 39. Nor does the loss of freight fall within the Convention on Limitation of Liability for Maritime Claims art 2(1)(a): *Aegean Sea Traders Corp v Repsol Petroleo SA*. See also note 7. As to recourse claims in respect of damage caused by oil pollution see *Aegean Sea Traders Corp v Repsol Petroleo SA*.

- 4 As to the meaning of 'salvage operations' see PARA 1043 note 3.
- 5 Convention on Limitation of Liability for Maritime Claims art 2(1)(a). See note 2.
- 6 Convention on Limitation of Liability for Maritime Claims art 2(1)(b). See note 2.
- 7 Convention on Limitation of Liability for Maritime Claims art 2(1)(c). See note 2. Loss of freight does not fall within art 2(1)(c): *Aegean Sea Traders Corporation v Repsol Petroleo SA* [1998] 2 Lloyd's Rep 39. See also note 3.
- 8 Convention on Limitation of Liability for Maritime Claims art 2(1)(d). See note 2.
 The right to limit liability for claims under art 2(1)(d) does not apply to the law of the United Kingdom unless provision has been made by an order of the Secretary of State for the setting up and management of a fund to be used for the making to harbour or conservancy authorities of payments needed to compensate them for the reduction, in consequence of art 2(1)(d), of amounts recoverable by them in claims of the kind mentioned in head (4) in the text, and to be maintained by contributions from such authorities raised and collected by them in respect of vessels in like manner as other sums so raised by them: Merchant Shipping Act 1995 Sch 7 Pt II paras 1, 3(1). Such an order may contain such incidental and supplemental provisions as appear to the Secretary of State to be necessary or expedient: Sch 7 Pt II para 3(2). However, at the date at which this volume states the law, no such order had been made and none has effect as if so made. As to the meaning of 'harbour authority' see PARA 68 note 4; and as to the meaning of 'conservancy authority' see PARA 71 note 2. As to the Secretary of State see PARA 38; and as to the making of orders by the Secretary of State under the Merchant Shipping Act 1995 generally see PARA 41.
- 9 Convention on Limitation of Liability for Maritime Claims art 2(1)(e). See note 2.
- 10 Convention on Limitation of Liability for Maritime Claims art 2(1)(f). See note 2.
- 11 Convention on Limitation of Liability for Maritime Claims art 2(2). See *The Breydon Merchant* [1992] 1 Lloyd's Rep 373 (under the Convention on Limitation of Liability for Maritime Claims, shipowners were entitled to limit their liability in respect of claims listed in art 2 whether such liability arose in contract, tort or by statute).
- 12 Convention on Limitation of Liability for Maritime Claims art 2(2).

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1045. Claims excepted from limitation under the Convention.

The rules of the Convention on Limitation of Liability for Maritime Claims¹ do not apply to²:

- 1172 (1) claims for salvage³ or contribution in general average⁴;
- 1173 (2) claims for oil pollution damage⁵;
- 1174 (3) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage⁶;
- 1175 (4) claims against the shipowner⁷ of a nuclear ship for nuclear damage⁸;
- 1176 (5) claims by servants of the shipowner or salvor⁹ whose duties are connected with the ship¹⁰ or the salvage operations¹¹, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in the general limits¹² of liability¹³.

Claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996¹⁴, which arise from occurrences taking place after that Convention has effect in relation to the United Kingdom¹⁵, are also excluded from the Convention on Limitation of Liability for Maritime Claims¹⁶.

1 I.e. the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARAS 1043 et seq, 1046 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARAS 1043 et seq, 1046 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 Convention on Limitation of Liability for Maritime Claims art 3.

3 I.e. including, if applicable, any claim for special compensation under the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 14, as amended (see PARA 905): see the Convention on Limitation of Liability for Maritime Claims art 3(a) (substituted by SI 1998/1258).

4 Convention on Limitation of Liability for Maritime Claims art 3(a) (as substituted: see note 3). Only claims by the salvor against the shipowner are exempt: *The Breydon Merchant* [1992] 1 Lloyd's Rep 373.

5 Convention on Limitation of Liability for Maritime Claims art 3(b). Head (2) in the text refers to claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage (Brussels, 29 November 1969 to 31 December 1970; TS 106 (1975); Cmnd 4403) or of any amendment or Protocol thereto which is force (see PARA 8): see the Convention on Limitation of Liability for Maritime Claims art 3(b). Accordingly, the claims excluded from the Convention by art 3(b) are claims in respect of any liability incurred under the Merchant Shipping Act 1995 s 153 (as to which see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 445): Sch 7 Pt II paras 1, 4(2).

6 Convention on Limitation of Liability for Maritime Claims art 3(c). The claims excluded from the Convention by art 3(c) are claims made by virtue of any of the Nuclear Installations Act 1965 ss 7-11 (see **FUEL AND ENERGY** vol 19(2) (Reissue) PARA 1270 et seq): Sch 7 Pt II paras 1, 4(3).

7 As to the meaning of 'shipowner' see PARA 1043 note 2.

8 Convention on Limitation of Liability for Maritime Claims art 3(d).

9 As to the meaning of 'salvor' see PARA 1043 note 3.

10 As to the meaning of references to a ship see PARA 1043 note 2.

11 As to the meaning of 'salvage operations' see PARA 1043 note 3.

12 Ie provided for in the Convention on Limitation of Liability for Maritime Claims art 6 (see PARA 1048): see art 3(e).

13 Convention on Limitation of Liability for Maritime Claims art 3(e). As to the 'contract of service' see PARA 1042 note 8.

14 Ie the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 (London, 3 May 1996; Misc 5 (1997); Cm 3580) or any amendment of or Protocol to that Convention (as to which see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 472 et seq): see the Merchant Shipping Act 1995 Sch 7 Pt II para 4(1) (substituted by SI 1998/1258). The text of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, excluding the annexes, is set out in the Merchant Shipping Act 1995 s 182A(2), Sch 5A: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 474 et seq.

15 Ie which arise from occurrences which take place after the coming into force of the first Order in Council made by Her Majesty under the Merchant Shipping Act 1995 s 182B (power to give effect to the Convention) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 472 et seq): see Sch 7 Pt II para 4(1) (as substituted: see note 14).

16 Merchant Shipping Act 1995 Sch 7 Pt II para 4(1) (as substituted: see note 14).

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1046. Conduct barring limitation under the Convention.

Under the Convention on Limitation of Liability for Maritime Claims¹, a person liable is not entitled to limit his liability if it is proved² that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result³.

1 The Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARAS 1043 et seq, 1047 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARAS 1043 et seq, 1047 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 The policy of the Convention on Limitation of Liability for Maritime Claims is on the one hand to make it more difficult to deny limitation of liability and on the other to fix much higher limits of liability: see *The Breydon Merchant* [1992] 1 Lloyd's Rep 373 at 376 per Sheen J.

3 Convention on Limitation of Liability for Maritime Claims art 4. Cf the position under the Warsaw Convention: see eg *Goldman v Thai Airways International Ltd* [1983] 3 All ER 693, [1983] 1 WLR 1186, CA; *Qantas Airways Ltd v SS Pharmaceutical Co Ltd* [1989] 1 Lloyd's Rep 319, NSW CA; affd [1991] 1 Lloyd's Rep 288, Aust CA.

The Convention on Limitation of Liability for Maritime Claims art 4 requires actual knowledge; 'shut-eye' knowledge is not sufficient: *MSC Mediterranean Shipping Co SA v Delumar BVBA* [2000] 2 All ER (Comm) 458, [2000] 2 Lloyd's Rep 399 (absent any allegation of intent, the person challenging the right to limit must establish both reckless conduct and knowledge that the relevant loss would probably result, these two requirements being cumulative). See also *Schiffahrtsgesellschaft MS Merkur Sky MbH & Co KG v MS Leerort Nth Schiffahrts GmbH & Co KG, The Leerort and The Zim Piraeus* [2001] EWCA Civ 1055, [2001] 2 Lloyd's Rep 291 (the knowledge or foresight required is of the very loss that has in fact occurred, and not just loss of that type). However, see *Margolle v Delta Maritime Co Ltd* [2002] EWHC 2452 (Admlty), [2003] 1 All ER (Comm) 102, [2003] 1 Lloyd's Rep 203 (where a master, contrary to regulations, steers his vessel against the flow of traffic in a busy shipping lane, it can be inferred that he has the relevant knowledge that loss will probably result).

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1047. Counterclaims under the Convention.

Under the Convention on Limitation of Liability for Maritime Claims¹, where a person entitled to limitation of liability² has a claim against the claimant arising out of the same occurrence, their respective claims must be set off against each other and the provisions of the Convention only apply to the balance, if any³.

1 I.e. the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARAS 1043 et seq, 1048 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARAS 1043 et seq, 1048 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 I.e. in accordance with the rules of the Convention on Limitation of Liability for Maritime Claims (see PARAS 1043 et seq, 1048 et seq): see art 5.

3 Convention on Limitation of Liability for Maritime Claims art 5.

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B. LIMITS OF LIABILITY UNDER THE CONVENTION

1048. General limits of liability under the Convention.

Under the Convention on Limitation of Liability for Maritime Claims¹, the limits of liability for claims arising on any distinct occasion, other than in respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship², must be calculated as follows³:

- 1177 (1) in respect of claims for loss of life or personal injury:
1123
1. (a) two million units of account⁴ for a ship⁵ with a tonnage not exceeding 2,000 tons⁶;
 2. (b) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in head (1)(a) above, that is to say, for each ton from 2,001 to 30,000 tons, 800 units of account, for each ton from 30,001 to 70,000 tons, 600 units of account, and, for each ton in excess of 70,000 tons, 400 units of account⁷;
- 1124
1178 (2) in respect of any other claims:
1125
3. (a) one million units of account for a ship with a tonnage not exceeding 2,000 tons⁸;
 4. (b) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in head (2)(a) above, that is to say, for a ship with a tonnage in excess of 2,000 tons, the additional amounts are, for each ton from 2,001 to 30,000 tons, 400 units of account, for each ton from 30,001 to 70,000 tons, 300 units of account, and, for each ton in excess of 70,000 tons, 200 units of account⁹.
- 1126

Where the amount calculated in accordance with head (1) above is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with head (2) above must be available for payment of the unpaid balance of claims under head (1) above and such unpaid balance ranks rateably with claims mentioned under head (2) above¹⁰.

The limits of liability for any salvor¹¹ not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, must be calculated according to a tonnage of 1,500 tons¹².

In the application of the general limits of liability¹³ to a ship with a tonnage less than 300 tons¹⁴, those limits have effect as if head (1)(a) above referred to one million units of account and as if head (2)(a) above referred to 500,000 units of account¹⁵.

¹ ie the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime

Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARAS 1043 et seq, 1049 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARAS 1043 et seq, 1049 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 le other than claims mentioned in the Convention on Limitation of Liability for Maritime Claims art 7 (see PARA 1049): see art 6(1) (substituted by SI 1998/1258). As to the meaning of 'claims for loss of life or personal injury to passengers of a ship' for these purposes see PARA 1049 note 2.

3 Convention on Limitation of Liability for Maritime Claims art 6(1) (as substituted: see note 2). As to the modification of art 6 in relation to ships with a tonnage of less than 300 tons see notes 13-15; and as to the calculation of gross tonnage see note 14. As to the conversion into sterling of units of account see PARA 1050.

4 As to units of account see PARA 1050.

5 As to the meaning of references to a ship see PARA 1043 note 2.

6 Convention on Limitation of Liability for Maritime Claims art 6(1)(a)(i) (as substituted: see note 2).

7 Convention on Limitation of Liability for Maritime Claims art 6(1)(a)(ii) (as substituted: see note 2).

8 Convention on Limitation of Liability for Maritime Claims art 6(1)(b)(i) (as substituted: see note 2).

9 Convention on Limitation of Liability for Maritime Claims art 6(1)(b)(ii) (as substituted: see note 2).

10 Convention on Limitation of Liability for Maritime Claims art 6(2).

11 As to the meaning of 'salvor' see PARA 1043 note 3.

12 Convention on Limitation of Liability for Maritime Claims art 6(4). There is no art 6(3) in the Queen Printer's copy.

13 le in the application of the Convention on Limitation of Liability for Maritime Claims art 6 (see the text and notes 1-12): see the Merchant Shipping Act 1995 Sch 7 Pt II para 5(1) (amended by SI 1998/1258).

14 For these purposes, a ship's tonnage is its gross tonnage calculated in such manner as may be prescribed by an order made by the Secretary of State: Merchant Shipping Act 1995 Sch 7 Pt II para 5(2). Any such order must, so far as appears to the Secretary of State to be practicable, give effect to the regulations in the International Convention on Tonnage Measurement of Ships (London, 23 June to 23 December 1969; TS 50 (1982); Cmnd 8716) Annex 1 (as to which see PARAS 8, 248 et seq): see the Merchant Shipping Act 1995 Sch 7 Pt II para 5(3). As to the Secretary of State see PARA 38; and as to the making of orders by the Secretary of State under the Merchant Shipping Act 1995 generally see PARA 41. At the date at which this volume states the law, no such order had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Liability of Shipowners and Others) (Calculation of Tonnage) Order 1986, SI 1986/1040, has effect as if so made. Accordingly, for the purposes of the Convention on Limitation of Liability for Maritime Claims art 6 and the Merchant Shipping Act 1995 Sch 7 Pt II para 5, the gross tonnage of a ship must be calculated in accordance with the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510 (as to which see PARA 248 et seq): Merchant Shipping (Liability of Shipowners and Others) (Calculation of Tonnage) Order 1986, SI 1986/1040, art 2(1); Interpretation Act 1978 s 17(2)(b). In the case of a ship of which, at the time when the limitation is claimed, the tonnage has not yet been and cannot be ascertained in accordance with the Merchant Shipping (Liability of Shipowners and Others) (Calculation of Tonnage) Order 1986, SI 1986/1040, art 2(1), the best evidence available of the measurements of the ship must be used in so calculating the tonnage of the ship: art 2(2).

15 Merchant Shipping Act 1995 Sch 7 Pt II para 5(1) (as amended: see note 13).

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1049. Limit for passenger claims under the Convention.

Under the Convention on Limitation of Liability for Maritime Claims¹, in respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship², the limit of liability of the shipowner³ thereof is an amount of 175,000 units of account⁴ multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate⁵.

1 The Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARAS 1043 et seq, 1050 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARAS 1043 et seq, 1050 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 For these purposes, 'claims for loss of life or personal injury to passengers of a ship' means any such claims brought by or on behalf of any person carried in that ship under a contract of passenger carriage or who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods: Convention on Limitation of Liability for Maritime Claims art 7(2). In art 7(2), the reference to 'claims brought [. . .] on behalf of a person' includes a reference to any claim in respect of the death of a person under the Fatal Accidents Act 1976 (as to which see **NEGLIGENCE** vol 78 (2010) PARA 24 et seq): Merchant Shipping Act 1995 Sch 7 Pt II para 6(2). As to the meaning of references to a ship see PARA 1043 note 2.

3 As to the meaning of 'shipowner' see PARA 1043 note 2.

4 As to units of account, and as to the conversion into sterling of units of account, see PARA 1050.

5 Convention on Limitation of Liability for Maritime Claims art 7(1) (substituted by SI 1998/1258). The Convention on Limitation of Liability for Maritime Claims art 7 does not apply in respect of any sea-going ship, and has effect in respect of any ship which is not sea-going as if art 7(1) were to read 'in respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof, in respect of each passenger, is an amount of 175,000 units of account': Merchant Shipping Act 1995 Sch 7 Pt II para 6(1) (substituted by SI 1998/1258).

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1050. Unit of account used in the Convention.

Under the Convention on Limitation of Liability for Maritime Claims¹, the unit of account that is referred to for the purposes of setting limits of liability² is the special drawing right as defined by the International Monetary Fund³. The amounts payable under the Convention⁴ must be converted into the national currency of the state in which limitation is sought⁵, according to the value of that currency at the date the limitation fund⁶ has been constituted, payment is made, or security is given which under the law of that state is equivalent to such payment⁷.

Accordingly, for the purpose of converting the amounts payable under the Convention⁸ from special drawing rights into sterling, one special drawing right is to be treated as equal to such a sum in sterling as the International Monetary Fund has fixed as being the equivalent of one special drawing right for⁹:

- 1179 (1) the relevant date¹⁰; or
- 1180 (2) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed¹¹.

A certificate given by or on behalf of the Treasury¹² stating:

- 1181 (a) that a particular sum in sterling has been fixed as mentioned in head (1) above for a particular date¹³; or
- 1182 (b) that no sum has been so fixed for that date and that a particular sum in sterling has been so fixed for a date which is the last preceding date for which a sum has been so fixed¹⁴,

is conclusive evidence of those matters; and a document purporting to be such a certificate must, in any proceedings, be received in evidence and, unless the contrary is proved, is deemed to be such a certificate¹⁵.

1 I.e. the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARAS 1043 et seq, 1051 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARAS 1043 et seq, 1051 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 I.e. the unit of account referred to in the Convention on Limitation of Liability for Maritime Claims art 6 (see PARA 1048) and art 7 (see PARA 1049): see art 8.

3 Convention on Limitation of Liability for Maritime Claims art 8. As to the International Monetary Fund see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1391; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 533.

4 I.e. the amounts mentioned in the Convention on Limitation of Liability for Maritime Claims art 6 (see PARA 1048) and art 7 (see PARA 1049): see art 8.

- 5 As to Orders in Council which are made declaring that any state specified in the Order is a party to the Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol, see PARA 1042 note 3.
- 6 As to the limitation fund see PARA 1053 et seq.
- 7 Convention on Limitation of Liability for Maritime Claims art 8.
- 8 le the amounts mentioned in the Convention on Limitation of Liability for Maritime Claims art 6 (see PARA 1048) and art 7 (see PARA 1049): see the Merchant Shipping Act 1995 s 185(2), Sch 7 Pt II paras 1, 7(1).
- 9 Merchant Shipping Act 1995 Sch 7 Pt II paras 1, 7(1).
- 10 Merchant Shipping Act 1995 Sch 7 Pt II para 7(1)(a). Head (1) in the text refers to the relevant date under the Convention on Limitation of Liability for Maritime Claims art 8(1) (*sic*) (see the text and notes 4-7): see the Merchant Shipping Act 1995 Sch 7 Pt II para 7(1)(a).
- 11 Merchant Shipping Act 1995 Sch 7 Pt II para 7(1)(b).
- 12 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.
- 13 Merchant Shipping Act 1995 Sch 7 Pt II para 7(2)(a).
- 14 Merchant Shipping Act 1995 Sch 7 Pt II para 7(2)(b).
- 15 Merchant Shipping Act 1995 Sch 7 Pt II para 7(2).

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1051. Aggregation of claims under the Convention.

Under the Convention on Limitation of Liability for Maritime Claims¹, the general limits of liability² apply to the aggregate of all claims which arise on any distinct occasion³:

- 1183 (1) against the owner, charterer, manager or operator of a sea-going ship⁴ and any person for whose act, neglect or default he or they are responsible⁵; or
- 1184 (2) against the shipowner⁶ of a ship rendering salvage services from that ship and the salvor⁷ or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible⁸; or
- 1185 (3) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible⁹.

The limits of liability for passenger claims¹⁰ apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the owner, charterer, manager or operator of a sea-going ship¹¹ in respect of the ship¹² and any person for whose act, neglect or default he or they are responsible¹³.

1 I.e. the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARAS 1043 et seq, 1052 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARAS 1043 et seq, 1052 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 I.e. the limits of liability determined in accordance with the Convention on Limitation of Liability for Maritime Claims art 6 (see PARA 1048): see art 9(1).

3 Convention on Limitation of Liability for Maritime Claims art 9(1).

4 I.e. the person or persons mentioned in the Convention on Limitation of Liability for Maritime Claims art 1(2) (see PARA 1043 note 2): see art 9(1). As to the meaning of references to a ship see PARA 1043 note 2.

5 Convention on Limitation of Liability for Maritime Claims art 9(1)(a).

6 As to the meaning of 'shipowner' see PARA 1043 note 2.

7 As to the meaning of 'salvor' see PARA 1043 note 3.

8 Convention on Limitation of Liability for Maritime Claims art 9(1)(b).

9 Convention on Limitation of Liability for Maritime Claims art 9(1)(c).

10 I.e. the limits of liability determined in accordance with the Convention on Limitation of Liability for Maritime Claims art 7 (see PARA 1049): see art 9(2).

11 I.e. the person or persons mentioned in the Convention on Limitation of Liability for Maritime Claims art 1(2) (see PARA 1043 note 2): see art 9(2).

12 le claims referred to in the Convention on Limitation of Liability for Maritime Claims art 7 (see PARA 1049):
see art 9(2).

13 Convention on Limitation of Liability for Maritime Claims art 9(2).

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1052. Limitation of liability without constitution of a limitation fund.

Under the Convention on Limitation of Liability for Maritime Claims¹, limitation of liability may be invoked notwithstanding that a limitation fund² has not been constituted³.

If limitation of liability is invoked without the constitution of a limitation fund, the provisions relating to the distribution of that fund⁴ apply correspondingly⁵.

Questions of procedure arising under these rules⁶ must be decided in accordance with the national law of the state party⁷ in which action is brought⁸.

1 I.e. the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARAS 1043 et seq, 1053 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARAS 1043 et seq, 1053 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 I.e. as mentioned in the Convention on Limitation of Liability for Maritime Claims art 11 (see PARA 1053): see art 10(1).

3 Convention on Limitation of Liability for Maritime Claims art 10(1). It seems that art 10, which is in a separate chapter of the Convention from art 11 (constitution of the fund) (see PARA 1053), grants a free-standing entitlement to limit irrespective of whether there was ever a fund constituted; and there is nothing in the Civil Procedure Rules to support the opposite contention: see *The Western Regent (Owners) v The Western Regent (Charterers)* [2005] EWHC 460 (Admlty), [2005] 2 All ER (Comm) 51.

4 I.e. the provisions of the Convention on Limitation of Liability for Maritime Claims art 12 (see PARA 1054): see art 10(2).

5 Convention on Limitation of Liability for Maritime Claims art 10(2).

6 I.e. under the rules of the Convention on Limitation of Liability for Maritime Claims art 10: see art 10(3).

7 As to Orders in Council which are made declaring that any state specified in the Order is a party to the Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol, see PARA 1042 note 3.

8 Convention on Limitation of Liability for Maritime Claims art 10(3).

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C. THE LIMITATION FUND UNDER THE CONVENTION

1053. Constitution of the limitation fund.

Under the Convention on Limitation of Liability for Maritime Claims¹, any person alleged to be liable may constitute a fund with the court² or other competent authority in any state party³ in which legal proceedings are instituted in respect of claims subject to limitation⁴. The fund must be constituted in the sum of such of the amounts payable⁵ as are applicable to claims for which that person may be liable, together with interest thereon⁶ from the date of the occurrence giving rise to the liability until the date of the constitution of the fund⁷. A fund may be constituted either by depositing the sum, or by producing a guarantee acceptable under the legislation of the state party where the fund is constituted and considered to be adequate by the court or other competent authority⁸. Any fund thus constituted is available only for the payment of claims in respect of which limitation of liability can be invoked⁹.

Where a fund is so constituted with the court¹⁰ for the payment of claims arising out of any occurrence, the court may stay any proceedings relating to any claim arising out of that occurrence which are pending against the person by whom the fund has been constituted¹¹.

1 The Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARAS 1043 et seq, 1054 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARAS 1043 et seq, 1054 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 References in the Convention and in the Merchant Shipping Act 1995 Sch 7 Pt II paras 1-10 (see note 1) to the court are references to the High Court: Sch 7 Pt II para 11.

3 As to Orders in Council which are made declaring that any state specified in the Order is a party to the Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol, see PARA 1042 note 3.

4 Convention on Limitation of Liability for Maritime Claims art 11(1). A fund constituted by one of the persons mentioned in art 9(1)(a)-(c), or in art 9(2) (see PARA 1051) or his insurer, is deemed constituted by all persons mentioned in art 9(1)(a)-(c), or in art 9(2), respectively: art 11(3).

As to the situation where limitation is obtained before liability is even established see *Bouygues Offshore SA v Caspian Shipping Co* [1998] 2 Lloyd's Rep 461, CA; *Vessel SA v CP Ships (UK) Ltd*, sub nom *Denise (The Owners) v The Denise (Charterers)* [2004] EWHC 3305 (Admlty), [2005] 2 All ER (Comm) 47. See also *Schiffahrtsgesellschaft MS Merkur Sky MbH & Co KG v MS Leerort Nth Schiffahrts GmbH & Co KG, The Leerort and The Zim Piraeus* [2001] EWCA Civ 1055, [2001] 2 Lloyd's Rep 291 (judge had been correct to conclude that decree of limitation should not have been delayed to permit one of the cargo owners to pursue further discovery on a case that was doomed to failure). As to whether the entitlement to constitute a fund could arise when proceedings by way of arbitration in London had proceeded to an award see *ICL Shipping Ltd v Chin Tai Steel Enterprise Co Ltd, The ICL Vikraman* [2003] EWHC 2320 (Comm), [2004] 1 All ER (Comm) 246, [2004] 1 WLR 2254, [2004] 1 Lloyd's Rep 21 (arbitration proceedings are legal proceedings for the purpose of the Convention on Limitation of Liability for Maritime Claims art 11(1)).

As to the relationship between art 10 (limitation of liability without constitution of a limitation fund) (see PARA 1052) and art 11(1) see *Seismic Shipping Inc v Total E&P UK plc, The Western Regent* [2005] EWCA Civ 985,

[2005] 2 All ER (Comm) 515, [2005] 2 Lloyd's Rep 359 (affg *The Western Regent (Owners) v The Western Regent (Charterers)*)[2005] EWHC 460 (Admlty), [2005] 2 All ER (Comm) 51).

5 The amounts set out in the Convention on Limitation of Liability for Maritime Claims art 6 (see PARA 1048) or art 7 (see PARA 1049): see art 11(1).

6 The Secretary of State may, with the concurrence of the Treasury, by order prescribe the rate of interest for the purposes of the Convention on Limitation of Liability for Maritime Claims art 11(1): Merchant Shipping Act 1995 Sch 7 Pt II paras 1, 8(1). Any statutory instrument containing such an order must be laid before Parliament after being made: Sch 7 Pt II para 8(2). In exercise of the powers conferred by Sch 7 Pt II para 8(1), the Secretary of State, with the concurrence of the Treasury, has made the Merchant Shipping (Liability of Shipowners and Others) (New Rate of Interest) Order 2004, SI 2004/931. Accordingly, the rate of interest for the purposes of the Convention on Limitation of Liability for Maritime Claims art 11(1) is the prescribed rate from 31 December 2003, where the occurrence takes place before 1 September 1999 (but the fund is constituted on or after 1 September 1999) or where the occurrence takes place on or after 1 September 1999: Merchant Shipping (Liability of Shipowners and Others) (New Rate of Interest) Order 2004, SI 2004/931, art 4. For these purposes, 'prescribed rate' means 1% more than the base rate quoted from time to time by the Bank of England or the rate of interest set by any body which may supersede it and where there is more than one such rate, the lowest of them: art 2. As to the Secretary of State see PARA 38; and as to the making of orders by the Secretary of State under the Merchant Shipping Act 1995 generally see PARA 41. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

7 Convention on Limitation of Liability for Maritime Claims art 11(1).

8 Convention on Limitation of Liability for Maritime Claims art 11(2).

9 Convention on Limitation of Liability for Maritime Claims art 11(1).

10 The in accordance with the Convention on Limitation of Liability for Maritime Claims art 11(1) (see the text and notes 1-9): see the Merchant Shipping Act 1995 Sch 7 Pt II paras 1, 8(3).

11 Merchant Shipping Act 1995 Sch 7 Pt II paras 1, 8(3). As to the persons by whom the fund has been constituted see note 4.

UPDATE

1053 Constitution of the limitation fund

NOTE 4--See *Metvale Ltd v Monsanto International Sarl, The MSC Napoli*[2008] EWHC 3002 (Admlty), [2009] 1 All ER (Comm) 1158 (limitation fund deemed constituted by defendant charterers who were entitled to limit their liability).

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1054. Distribution of the limitation fund.

Under the Convention on Limitation of Liability for Maritime Claims¹, the limitation fund² must be distributed³ among the claimants in proportion to their established claims against the fund⁴.

If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund, such person acquires by subrogation, up to the amount he has paid, the rights which the person so compensated would have enjoyed under the Convention⁵. Such right of subrogation may also be exercised by other persons in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law⁶.

Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation⁷ had the compensation been paid before the fund was distributed, the court⁸ or other competent authority of the state where the fund has been constituted may order that a sufficient sum be provisionally set aside to enable such person at such later date to enforce his claim against the fund⁹.

1 I.e. the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARAS 1043 et seq, 1055 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARAS 1043 et seq, 1055 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 As to the constitution of the limitation fund see PARA 1053.

3 I.e. subject to the provisions of the Convention on Limitation of Liability for Maritime Claims art 6(1), (2) (see PARA 1048) or art 7 (see PARA 1049): see art 12(1).

4 Convention on Limitation of Liability for Maritime Claims art 12(1). No lien or other right in respect of any ship or property affects the proportions in which under art 12 the limitation fund is distributed among several claimants: Merchant Shipping Act 1995 Sch 7 Pt II paras 1, 9. As to the meaning of references to a ship see PARA 1043 note 2.

5 Convention on Limitation of Liability for Maritime Claims art 12(2).

6 Convention on Limitation of Liability for Maritime Claims art 12(3).

7 I.e. pursuant to the Convention on Limitation of Liability for Maritime Claims art 12(2), (3) (see the text and notes 5-6): see art 12(4).

8 As to the meaning of references to the court see PARA 1053 note 2.

9 Convention on Limitation of Liability for Maritime Claims art 12(4).

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1055. Bar to other actions once limitation fund has been constituted.

Where, under the Convention on Limitation of Liability for Maritime Claims¹, a limitation fund has been constituted², any person having made a claim against the fund is barred from exercising any right in respect of such a claim against any other assets of a person by or on behalf of whom the fund has been constituted³.

After a limitation fund has been constituted⁴, any ship⁵ or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a state party⁶ for a claim which may be raised against the fund, or any security given, may be released by order of the court⁷ or other competent authority of such state⁸. However, such release must always be ordered if the limitation fund has been constituted:

- 1186 (1) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter⁹; or
- 1187 (2) at the port of disembarkation in respect of claims for loss of life or personal injury¹⁰; or
- 1188 (3) at the port of discharge in respect of damage to cargo¹¹; or
- 1189 (4) in the state where the arrest is made¹².

These rules¹³ apply only if the claimant may bring a claim against the limitation fund before the court administering that fund and the fund is actually available and freely transferable in respect of that claim¹⁴.

1 I.e. the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARAS 1043 et seq, 1056 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARAS 1043 et seq, 1056 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 I.e. in accordance with the Convention on Limitation of Liability for Maritime Claims art 11 (see PARA 1053): see art 13(1).

3 Convention on Limitation of Liability for Maritime Claims art 13(1).

4 I.e. in accordance with the Convention on Limitation of Liability for Maritime Claims art 11 (see PARA 1053): see art 13(2).

5 As to the meaning of references to a ship see PARA 1043 note 2.

6 As to Orders in Council which are made declaring that any state specified in the Order is a party to the Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol, see PARA 1042 note 3.

7 As to the meaning of references to the court see PARA 1053 note 2.

8 Convention on Limitation of Liability for Maritime Claims art 13(2). Where the release of a ship or other property is ordered under art 13(2), the person on whose application it is ordered to be released is deemed to have submitted to the jurisdiction of the court to adjudicate on the claim for which the ship or property was arrested or attached: Merchant Shipping Act 1995 Sch 7 Pt II paras 1, 10.

See *ICL Shipping Ltd v Chin Tai Steel Enterprise Co Ltd, The ICL Vikraman* [2003] EWHC 2320 (Comm), [2004] 1 All ER (Comm) 246, [2004] 1 WLR 2254, [2004] 1 Lloyd's Rep 21 (security in form of letter of undertaking to pay any damages awarded not required to be released as proceedings still current in state which was not party to the Convention).

9 Convention on Limitation of Liability for Maritime Claims art 13(2)(a).

10 Convention on Limitation of Liability for Maritime Claims art 13(2)(b).

11 Convention on Limitation of Liability for Maritime Claims art 13(2)(c).

12 Convention on Limitation of Liability for Maritime Claims art 13(2)(d).

13 le the rules of the Convention on Limitation of Liability for Maritime Claims art 13(1), (2) (see the text and notes 1-12): see art 13(3)

14 Convention on Limitation of Liability for Maritime Claims art 13(3).

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1056. Governing law for the constitution and distribution of limitation fund.

Under the Convention on Limitation of Liability for Maritime Claims¹, the rules relating to the constitution and distribution of a limitation fund², and all rules of procedure in connection therewith, are governed³ by the law of the state party⁴ in which the fund is constituted⁵.

1 I.e. the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARAS 1043 et seq, 1057 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARAS 1043 et seq, 1057 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 As to the constitution of a limitation fund see PARA 1053; and as to the distribution of a limitation fund see PARA 1054.

3 I.e. subject to the provisions of the Convention on Limitation of Liability for Maritime Claims Ch III (arts 11-14) (see PARAS 1053-1055): see art 14.

4 As to Orders in Council which are made declaring that any state specified in the Order is a party to the Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol, see PARA 1042 note 3.

5 Convention on Limitation of Liability for Maritime Claims art 14.

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D. SCOPE OF APPLICATION OF THE CONVENTION

1057. General application of the Convention.

The Convention on Limitation of Liability for Maritime Claims¹ applies whenever any person who is entitled to limit liability² seeks to limit his liability before the court³ of a state party⁴ or seeks to procure the release of a ship⁵ or other property or the discharge of any security given within the jurisdiction of any such state⁶.

A state party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are, according to the law of that state, ships intended for navigation on inland waterways⁷, or ships of less than 300 tons⁸. However, a state party which makes use of such an option must inform the depositary of the limits of liability adopted in its national legislation, or of the fact that there are none⁹.

Notwithstanding the limit of liability prescribed for passenger claims¹⁰, a state party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that so prescribed¹¹. However, a state party which makes use of such an option must inform the Secretary General of the International Maritime Organisation¹² of the limits of liability adopted, or of the fact that there are none¹³.

1 The Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARAS 1043 et seq, 1058 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARAS 1043 et seq, 1058 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 The any person referred to in the Convention on Limitation of Liability for Maritime Claims art 1 (see PARA 1043): see art 15(1) (renumbered by SI 1998/1258).

3 As to the meaning of references to the court see PARA 1053 note 2.

4 As to Orders in Council which are made declaring that any state specified in the Order is a party to the Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol, see PARA 1042 note 3.

5 As to the meaning of references to a ship see PARA 1043 note 2.

6 Convention on Limitation of Liability for Maritime Claims art 15(1) (as renumbered: see note 2).

For general comments on the application of the Convention on Limitation of Liability for Maritime Claims see *The Herceg Novi (owners) v Ming Galaxy (owners)* [1998] 4 All ER 238, [1998] 2 Lloyd's Rep 454, CA (collision occurring in the Straits of Singapore when Singapore still held to the earlier Convention of 1957). See also *Seismic Shipping Inc v Total E&P UK plc, The Western Regent* [2005] EWCA Civ 985, [2005] 2 All ER (Comm) 515, [2005] 2 Lloyd's Rep 359 (limitation proceedings could be brought in England where underlying proceedings instituted in Texas).

7 Convention on Limitation of Liability for Maritime Claims art 15(2)(a) (art 15(2) added by SI 1998/1258).

- 8 Convention on Limitation of Liability for Maritime Claims art 15(2)(b) (as added: see note 7).
- 9 Convention on Limitation of Liability for Maritime Claims art 15(2) (as added: see note 7).
- 10 le the limits of liability determined in accordance with the Convention on Limitation of Liability for Maritime Claims art 7(1) (see PARA 1049): see art 15(3bis) (added by SI 1998/1258).
- 11 Convention on Limitation of Liability for Maritime Claims art 15(3bis) (as added: see note 10).
- 12 As to the International Maritime Organisation see PARA 13.
- 13 Convention on Limitation of Liability for Maritime Claims art 15(3bis) (as added: see note 10).

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1058. Reservations under the Convention.

Under the Convention on Limitation of Liability for Maritime Claims¹, any state² may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right to exclude³:

- 1190 (1) the right to make subject to limitation⁴: (a) claims in respect of the raising, removal, destruction or the rendering harmless of a ship⁵ which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship⁶; or (b) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship⁷; and
- 1191 (2) claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996⁸, or of any amendment or Protocol thereto⁹.

No other reservations are admissible to the substantive provisions of the Convention on Limitation of Liability for Maritime Claims¹⁰.

1 The Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) (as to which see PARA 8). The provisions of the Convention on Limitation of Liability for Maritime Claims that have the force of law in the United Kingdom are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt I (arts 1-15, 18) (see PARA 1043 et seq) and are referred to therein, and in Sch 7 Pt II (paras 1-13) (see PARA 1043 et seq), as the 'Convention': see s 185(1); and PARA 1042. The provisions of Sch 7 Pt II have effect in connection with the Convention; and the Merchant Shipping Act 1995 s 185(1) has effect subject to the provisions of Pt II (paras 1-13): see s 185(2); and PARA 1042.

2 As to Orders in Council which are made declaring that any state specified in the Order is a party to the Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol, see PARA 1042 note 3.

3 Convention on Limitation of Liability for Maritime Claims art 18(1) (art 18 added by SI 1998/1258).

4 Head (1) in the text refers to the right to exclude the application of the Convention on Limitation of Liability for Maritime Claims art 2(1)(d), (e) (see PARA 1044): see art 18(1)(a) (as added: see note 3).

5 As to the meaning of references to a ship see PARA 1043 note 2.

6 See the Convention on Limitation of Liability for Maritime Claims arts 2(1)(d), 18(1)(a) (art 18(1)(a) as added: see note 3).

7 See the Convention on Limitation of Liability for Maritime Claims arts 2(1)(e), 18(1)(a) (art 18(1)(a) as added: see note 3).

8 The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 (London, 3 May 1996; Misc 5 (1997); Cm 3580) (as to which see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 472 et seq): see the Convention on Limitation of Liability for Maritime Claims art 18(1)(b) (as added: see note 3). The text of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, excluding the annexes, is set out in the Merchant Shipping Act 1995 s 182A(2), Sch 5A: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 474 et seq.

- 9 Convention on Limitation of Liability for Maritime Claims art 18(1)(b) (as added: see note 3).
- 10 Convention on Limitation of Liability for Maritime Claims art 18(1) (as added: see note 3).

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(2) EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE

1059. General exclusions.

The owner¹ of a United Kingdom ship² is not liable for any loss or damage in the following cases³, namely:

- 1192 (1) where any property on board the ship is lost or damaged by reason of fire on board the ship⁴; or
- 1193 (2) where any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and their nature and value were not at the time of shipment declared by their owner or shipper to the owner or master⁵ of the ship in the bill of lading or otherwise in writing⁶.

Where the loss or damage arises from anything done or omitted by any person in his capacity of master or member of the crew or, otherwise than in that capacity, in the course of his employment as a servant of the owner of the ship, the liability of the following persons is also excluded⁷, namely:

- 1194 (a) the master, member of the crew or servant⁸; and
- 1195 (b) in a case where the master or member of the crew is the servant of a person whose liability would not otherwise be so excluded⁹, the person whose servant he is¹⁰.

These provisions¹¹ do not exclude the liability of any person for any loss or damage resulting from any personal act or omission of his, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result¹².

1 For these purposes, 'owner', in relation to a ship, includes any part owner and any charterer, manager or operator of the ship: Merchant Shipping Act 1995 s 186(5). As to the meaning of 'ship' see PARA 229.

2 As to the meaning of 'United Kingdom ship' see PARA 230. The Merchant Shipping Act 1995 s 186 applies in relation to Her Majesty's ships as they apply in relation to other ships: s 186(4). As to the meaning of 'Her Majesty's ships' see the Crown Proceedings Act 1947 s 38(2); and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 103. As to the application of the Merchant Shipping Act 1995 s 186 to the Crown and its ships see PARA 1065.

3 Merchant Shipping Act 1995 s 186(1). The provisions of s 186(1) are subject to s 186(3) (see the text and notes 11-12): see s 186(1).

Nothing in the Pilotage Act 1987 s 22(3) or (4) (see PARA 584) affects any liability which may be excluded under the Merchant Shipping Act 1995 s 186 (see the Pilotage Act 1987 s 22(7); and PARA 584); nor does anything in the Merchant Shipping Act 1995 s 186 relieve a person of any liability imposed on him by the Convention relating to the Carriage of Passengers and their Luggage by Sea (Athens, 13 December 1974; TS 40 (1987); Cm 202) (see the Merchant Shipping Act 1995 s 183(2), Sch 6 Pt II para 13; and **CARRIAGE AND CARRIERS**).

4 Merchant Shipping Act 1995 s 186(1)(a). See note 3.

5 As to the meaning of 'master' see PARA 424.

6 Merchant Shipping Act 1995 s 186(1)(b). See note 3.

7 Merchant Shipping Act 1995 s 186(2). The text refers to the provisions of s 186(1) (see the text and notes 1-6) excluding liability, subject to s 186(3) (see the text and notes 11-12), in the circumstances set out in s 186(2): see s 186(2).

8 Merchant Shipping Act 1995 s 186(2)(a). See note 7.

9 He would not be excluded by the Merchant Shipping Act 1995 s 186(1) (see the text and notes 1-6), apart from s 186(2): see s 186(2)(b). See note 7.

10 Merchant Shipping Act 1995 s 186(2)(b). See note 7.

11 He the Merchant Shipping Act 1995 s 186: see s 186(3).

12 Merchant Shipping Act 1995 s 186(3). The text refers to the liability of any person for any loss or damage resulting from any such personal act or omission of his as is mentioned in the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) art 4 (conduct barring limitation) (see PARA 1046): see the Merchant Shipping Act 1995 s 186(3).

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(3) MULTIPLE FAULT; APPORTIONMENT, LIABILITY AND CONTRIBUTION

1060. Damage or loss: apportionment of liability.

Where, by the fault of two or more ships¹, damage or loss is caused² to one or more of those ships, to their cargoes or freight³, or to any property on board, the liability to make good the damage or loss is in proportion to the degree in which each ship was in fault⁴. If, in any such case, having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability must be apportioned equally⁵.

These rules as to apportionment⁶ apply to persons other than the owners of a ship who are responsible for the fault of the ships, as well as to the owners of a ship; and, where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, these rules apply to the charterers or other persons for the time being so responsible instead of the owners⁷.

However, nothing in these provisions which govern apportionment of liability⁸:

1196 (1) operates so as to render any ship liable for any loss or damage to which the fault of the ship has not contributed⁹;

1197 (2) affects the liability of any person under a contract of carriage or any contract, or is to be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law¹⁰.

1 As to the meaning of 'ship' see PARA 229. The provisions of the Merchant Shipping Act 1995 s 187 are to be read as if references to ships include references to hovercraft: see the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 7; the Interpretation Act 1978 s 17(2)(b); and PARA 386.

2 For these purposes, references to damage or loss caused by the fault of a ship include references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages: Merchant Shipping Act 1995 s 187(7).

3 For these purposes, 'freight' includes passage money and hire: Merchant Shipping Act 1995 s 187(6).

4 Merchant Shipping Act 1995 s 187(1). As to the application of s 187 to the Crown and its ships see PARA 1065. As to the time limit for proceedings see PARA 1063.

5 Merchant Shipping Act 1995 s 187(2).

6 I.e the Merchant Shipping Act 1995 s 187: see s 187(3).

7 Merchant Shipping Act 1995 s 187(3).

8 I.e nothing in the Merchant Shipping Act 1995 s 187: see s 187(4), (5).

9 Merchant Shipping Act 1995 s 187(4).

10 Merchant Shipping Act 1995 s 187(5). See *Smit International (Deutschland) GmbH v Josef Mobius*[2001] 2 All ER (Comm) 265 (apportionment of risk and responsibility governed by contractual terms).

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1061. Loss of life or personal injuries; joint and several liability.

Where loss of life or personal injuries are suffered by any person on board a ship¹ owing to the fault of that ship² and of any other ship or ships, the liability of the owners³ of the ships is joint and several⁴.

However, nothing in the provisions which govern such liability⁵ may be construed as depriving any person of any right of defence on which he might otherwise⁶ have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or affects the right of any person to limit his liability in the manner provided by law⁷.

1 As to the meaning of 'ship' see PARA 229. The provisions of the Merchant Shipping Act 1995 s 188 are to be read as if references to ships include references to hovercraft: see the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 7; the Interpretation Act 1978 s 17(2)(b); and PARA 386.

2 For these purposes, references to damage or loss caused by the fault of a ship include references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages: Merchant Shipping Act 1995 s 187(7), applied by s 188(4).

3 The rules contained in the Merchant Shipping Act 1995 s 188 apply to persons other than the owners of a ship who are responsible for the fault of the ships, as well as to the owners of a ship; and, where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, s 188 applies to the charterers or other persons for the time being so responsible instead of the owners: s 187(3), applied by s 188(2).

4 Merchant Shipping Act 1995 s 188(1). As to the application of s 188 to the Crown and its ships see PARA 1065. As to the time limit for proceedings see PARA 1063.

5 Ie nothing in the Merchant Shipping Act 1995 s 188: see s 188(3).

6 Ie apart from the Merchant Shipping Act 1995 s 188: see s 188(3).

7 Merchant Shipping Act 1995 s 188(3).

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1062. Loss of life or personal injuries; right of contribution.

Where loss of life or personal injuries are suffered by any person on board a ship¹ owing to the fault of that ship and any other ship or ships, and a proportion of the damages is recovered against the owners² of one of the ships which exceeds the proportion in which the ship was in fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault³.

However, nothing in these provisions governing the right of contribution⁴ authorises the recovery of any amount which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to claim therefor⁵.

In addition to any other remedy provided by law, the persons entitled to any contribution so recoverable⁶ have, for the purposes of recovering it, the same rights and powers as the persons entitled to claim for damages in the first instance⁷.

1 As to the meaning of 'ship' see PARA 229. The provisions of the Merchant Shipping Act 1995 s 189 are to be read as if references to ships include references to hovercraft: see the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 7; the Interpretation Act 1978 s 17(2)(b); and PARA 386.

2 The rules contained in the Merchant Shipping Act 1995 s 189 apply to persons other than the owners of a ship who are responsible for the fault of the ships, as well as to the owners of a ship; and, where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, s 189 applies to the charterers or other persons for the time being so responsible instead of the owners: s 187(3), applied by s 189(2).

3 Merchant Shipping Act 1995 s 189(1). As to the application of s 189 to the Crown and its ships see PARA 1065. As to the time limit for proceedings see PARA 1063.

4 Ie nothing in the Merchant Shipping Act 1995 s 189: see s 189(3).

5 Merchant Shipping Act 1995 s 189(3).

6 Ie recoverable under the Merchant Shipping Act 1995 s 189: see s 189(4).

7 Merchant Shipping Act 1995 s 189(4).

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General time limits for proceedings to enforce claim or lien against a ship or her owners.

(4) TIME LIMIT FOR PROCEEDINGS AGAINST OWNERS OR SHIP

1063. General time limits for proceedings to enforce claim or lien against a ship or her owners.

No proceedings to enforce any claim or lien against a ship¹ or her owners²:

1198 (1) in respect of damage or loss caused by the fault of that ship to another ship, its cargo or freight or any property on board it³; or

1199 (2) for damages for loss of life or personal injury caused by the fault of that ship to any person on board another ship⁴,

may be brought after the period of two years from the date when⁵:

1200 (a) the damage or loss was caused⁶; or

1201 (b) the loss of life or injury was suffered⁷.

Nor may any proceedings relating to multiple fault⁸, to enforce any contribution in respect of any overpaid proportion of any damages for loss of life or personal injury, be brought after the period of one year from the date of payment⁹.

Any court having jurisdiction in such proceedings¹⁰ may, however, in accordance with rules of court, extend the period allowed for bringing proceedings to such extent and on such conditions as it thinks fit¹¹.

Any such court, if satisfied that there has not been during any period allowed for bringing proceedings any reasonable opportunity of arresting the defendant ship¹², either:

1202 (i) within the jurisdiction of the court¹³; or

1203 (ii) within the territorial sea of the country to which the claimant's ship belongs or in which the claimant resides or has his principal place of business¹⁴,

must extend the period allowed for bringing proceedings to an extent sufficient to give a reasonable opportunity of so arresting the ship¹⁵.

1 As to the meaning of 'ship' see PARA 229. The provisions of the Merchant Shipping Act 1995 s 190 are to be read as if references to ships include references to hovercraft: see the Hovercraft (Civil Liability) Order 1986, SI 1986/1305, art 7; the Interpretation Act 1978 s 17(2)(b); and PARA 386. In *Steedman v Schofield* [1992] 2 Lloyd's Rep 163, a claim for damages against the operator of a jet-ski was held not to be time-barred by the Maritime Conventions Act 1911 s 8 (repealed) (now the Merchant Shipping Act 1995 s 190). It is submitted that this case would be decided similarly under the Merchant Shipping Act 1995 s 190. Although s 190 is derived from the Maritime Conventions Act 1911 s 8 (repealed), there are significant differences. In particular, the Act of 1911 did not specify that the extent of fault was immaterial (see note 3). Any cases which are cited in the footnotes to this paragraph and which are based on the Maritime Conventions Act 1911 s 8 (repealed) should, therefore, be treated with some caution when interpreting provisions of the Merchant Shipping Act 1995 s 190.

2 See the Merchant Shipping Act 1995 s 190(1). For this purpose, 'owners' includes any person responsible for the fault of the vessel, and charterers are to be substituted for owners where the owners are not responsible

for navigation and management: see *HMS Archer* [1919] P 1; *The Sobieski* [1949] P 313, [1949] 1 All ER 701, CA. See notes 1, 3. As to the application of s 190 to the Crown and its ships see PARA 1065.

3 Merchant Shipping Act 1995 s 190(1)(a). 'Fault' includes fault in the management of the ship: *John Franetovich & Co v Ministry of Defence, The Norwhale* [1975] QB 589, [1975] 1 Lloyd's Rep 610. The extent of the fault is immaterial for the purposes of the Merchant Shipping Act 1995 s 190: s 190(2). However, because s 190(2) applies only to claims which fall within s 190, claims which arise on board a ship and which lie against owners of that ship are not affected: *The Niceto de Larringa* [1966] P 80, [1965] 2 All ER 930. See note 1.

4 Merchant Shipping Act 1995 s 190(1)(b). See note 3. Other passenger claims will be governed by the Convention relating to the Carriage of Passengers and their Luggage by Sea (Athens, 13 December 1974; TS 40 (1987); Cm 202) (the 'Athens Convention') art 16 (as to which see PARA 8; and **CARRIAGE AND CARRIERS**).

5 See the Merchant Shipping Act 1995 s 190(3). The provisions of s 190(3) are subject to s 190(5), (6) (see the text and notes 10-15): see s 190(3).

The time limit provided by s 190 applies to counterclaims and cross-claims: *The Fairplay XIV* [1939] P 57, 65 Ll L Rep 108. See also *The Gniezno* [1968] P 418, [1967] 2 All ER 738, [1967] 1 Lloyd's Rep 441. A decree of limitation of liability does not override the two year period and rival claimants are therefore entitled to object to claims of persons who have not commenced proceedings within the statutory period, but, where limitation decrees are made, this may be a good reason for not issuing a claim form, so that in general an extension of time will be granted: see *The Disperser* [1920] P 228 at 235, 15 Asp MLC 112 at 114 per Hill J. See also note 11. The Merchant Shipping Act 1995 is complied with if the claim form is issued within two years, even though it is not served: see *The Espanoleto* [1920] P 223, 15 Asp MLC 287. The protection afforded by the Merchant Shipping Act 1995 s 190 is not waived by acknowledging service of a claim form: see *The Llandovery Castle* [1920] P 119; *The Alnwick* [1965] P 357, [1965] 2 All ER 569, [1965] 1 Lloyd's Rep 320, CA. See note 1.

6 Merchant Shipping Act 1995 s 190(3)(a). See note 7.

7 Merchant Shipping Act 1995 s 190(3)(b). See *The Caliph* [1912] P 213, 82 LJP 27 (where it was held that a claim could be brought within two years under the Maritime Conventions Act 1911 s 8 (repealed) (see now the Merchant Shipping Act 1995 s 190), notwithstanding that the Fatal Accidents Act 1846 (repealed) (see now the Fatal Accidents Act 1976) provided that the action had to be brought within 12 months (now three years) (see **NEGLIGENCE** vol 78 (2010) PARA 28)). See note 1.

As to the distinction between heads (a) and (b) in the text see *Sweet v The Owners of Blyth Lifeboat 'Edward Duke of Windsor'* (2002) Times, 22 February, [2002] All ER (D) 146 (Jan) (on the true construction of the Merchant Shipping Act 1995 s 190(3)(b), it was possible for time not to begin to run in respect of a personal injury until after the date on which the relevant accident occurred, if in the particular case psychiatric symptoms had not been apparent until after the date of the accident; the wording of s 190(3)(b) provided for the two year period to begin to run from the date when the injury 'was suffered', which contrasted with s 190(3)(a), which provided that the period began when the damage or loss to a vessel or cargo 'was caused').

8 In proceedings under any of the Merchant Shipping Act 1995 s 187 (see PARA 1060), s 188 (see PARA 1061) or s 189 (see PARA 1062): see s 190(4).

9 Merchant Shipping Act 1995 s 190(4). The provisions of s 190(4) are subject to s 190(5), (6) (see the text and notes 10-15): see s 190(4).

10 In proceedings under the Merchant Shipping Act 1995 s 190(3) (see the text and notes 1-7) or under s 190(4) (see the text and notes 8-9): see s 190(5).

11 Merchant Shipping Act 1995 s 190(5).

Although no rules have been made under s 190 (see also PARAS 152, 153), it is thought that the court's discretion is not thereby affected. This was the position under the Maritime Conventions Act 1911 (repealed): see *HMS Archer* [1919] P 1.

Accordingly, in an application for an extension of time, there is a two stage test: the court must first consider the question of fact as to whether good reason for the extension has been demonstrated by the claimants and only if the claimant has established good reason should the court proceed to exercise its discretion, taking into account the balance of hardship, as to whether such an extension should be granted: *The Al Tabith and The Alanfushi* [1995] 2 Lloyd's Rep 336, CA (distinguishing *The Zirje* [1989] 1 Lloyd's Rep 493). Mere oversight on the part of the claimant in failing to protect the time limit was not a good reason: *The Al Tabith and The Alanfushi*. There is much case law under the Maritime Conventions Act 1911 (repealed) as to how the discretion is to be exercised but these all need now to be considered in light of the two stage test in *The Al Tabith and The Alanfushi*. The exercise of the discretion ought not to be interfered with except on substantial grounds: *The Arraiz* (1924) 132 LT 715, 16 Asp MLC 451, CA. The claim will be allowed to proceed if satisfactory grounds are shown for the delay (*The Cambric* [1912] WN 272), but the party who wishes to have time extended must show substantial reasons why the other party should be deprived of the right to limitation of action which the law

gives (see *The Kashmir* [1923] P 85 at 89, 16 Asp MLC 81 at 83, CA). The discretion has been exercised where the claimant was induced by correspondence with the defendants' solicitors to delay whilst awaiting settlement of liability in the collision action arising from the same incident: *The Vadne* [1959] 2 Lloyd's Rep 480. In the exercise of its discretion, the court has allowed a statement of claim in a salvage action to be amended to include allegations of further services arising out of the same occurrence: *The Katcher I* [1969] P 65, [1968] 3 All ER 344, [1968] 2 Lloyd's Rep 232. As to the exercise of discretion see also *The Alnwick* [1965] P 357, [1965] 2 All ER 569, [1965] 1 Lloyd's Rep 320, CA; *The Disperser* [1920] P 228, 15 Asp MLC 112. Applications for an extension have been dismissed where the delay was due to difficulty in ascertaining the amount of the claim (*The James Westoll* [1923] P 94n, 16 Asp MLC 453n, CA), where agreement had been reached on liability but there was no binding agreement to waive the time limit and there was undue delay (*The Sauria and The Trent* [1957] 1 Lloyd's Rep 396, CA), where the claimant was ignorant that she had a claim (*The Kashmir*), where a deliberate decision was taken not to start proceedings (*The Lu Shan* [1991] 2 Lloyd's Rep 386), where unsuccessful proceedings were first taken against another ship (*The PLM 8* [1920] P 236, 15 Asp MLC 51), where the institution of proceedings was postponed while diplomatic representations were made (*HMS Archer*), where owners elected not to sue in the United Kingdom and let time run out (*The Nedenes* (1925) 23 Ll L Rep 57), where the matter had been allowed to go to sleep and any claim by the defendant against third parties was also statute barred (*The Hesselmoor, The Sergeant* [1951] 1 Lloyd's Rep 146) and where proceedings were not allowed to run while the parties were in negotiations (see *The Albany and The Marie Josaine* [1983] 2 Lloyd's Rep 195; and see *The Mouna* [1991] 2 Lloyd's Rep 221, CA). See note 1.

12 Merchant Shipping Act 1995 s 190(6). The test of whether there has been any reasonable opportunity to arrest a vessel is to be determined objectively, without regard to whether steps have actually been taken in an attempt to arrest in a particular jurisdiction: *Santos v Owners of the Baltic Carrier* [2001] 1 Lloyd's Rep 689. A period of ten days during which a ship is under requisition has been held not to constitute reasonable opportunity: *The Largo Law* (1920) 123 LT 560. The Merchant Shipping Act 1995 s 190 has no application to cases in which the defendant vessel is permanently immune from arrest: *HMS Archer* [1919] P 1. See note 1.

13 Merchant Shipping Act 1995 s 190(6)(a).

14 Merchant Shipping Act 1995 s 190(6)(b).

15 Merchant Shipping Act 1995 s 190(6).

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(5) LIMITATION OF LIABILITY OF HARBOUR, CONSERVANCY, DOCK AND CANAL AUTHORITIES

1064. General liability of harbour or conservancy authority etc.

The liability of a harbour authority¹, a conservancy authority² or the owners of any dock or canal³ for any loss or damage caused to any ship⁴, or to any goods, merchandise or other things whatsoever on board any ship is limited⁵ by reference to the tonnage of the largest United Kingdom ship⁶ which, at the time of the loss or damage is, or within the preceding five years has been, within the area over which the harbour authority, conservancy authority or owners of the dock or canal discharges or discharge any functions⁷.

Such limitation of liability⁸ relates to the whole of any losses and damages which may arise on any one distinct occasion, although such losses and damages may be sustained by more than one person, and applies whether the liability arises at common law or under any general or local or private Act, and notwithstanding anything contained in such an Act⁹.

These provisions¹⁰ do not exclude the liability of a harbour authority, a conservancy authority or the owners of a dock or canal for any loss or damage resulting from any such personal act or omission¹¹ committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result¹²; but nothing in these provisions imposes any liability for any loss or damage where no liability otherwise exists¹³.

1 As to the meaning of 'harbour authority' see PARA 68 note 4.

2 As to the meaning of 'conservancy authority' see PARA 71 note 2.

3 For these purposes, 'owners of any dock or canal' includes any authority or person having the control and management of any dock or canal, as the case may be; and 'dock' includes wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing places and jetties: Merchant Shipping Act 1995 s 191(9).

4 As to the meaning of 'ship' see PARA 229.

5 In accordance with the Merchant Shipping Act 1995 s 191(5): see s 191(2). Accordingly, the limit of liability must be ascertained by applying to the ship by reference to which the liability is to be determined the method of calculation specified in the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) art 6(1)(b), read with the Merchant Shipping Act 1995 s 185(2), Sch 7 Pt II para 5(1), (2) (see PARA 1048): s 191(5).

6 As to the meaning of 'United Kingdom ship' see PARA 230.

7 See the Merchant Shipping Act 1995 s 191(1), (2). For these purposes, a ship is not to be treated as having been within the area over which a harbour authority or conservancy authority discharges any functions by reason only that it has been built or fitted out within the area, or that it has taken shelter within or passed through the area on a voyage between two places both situated outside that area, or that it has loaded or unloaded mails or passengers within the area: s 191(7).

The Convention on Limitation of Liability for Maritime Claims art 11 (see PARA 1053) and art 12 (see PARA 1054) and the Merchant Shipping Act 1995 Sch 7 Pt II para 8 (see PARA 1053) and Sch 7 Pt II para 9 (see PARA 1054) apply for the purposes of s 191: s 191(6).

As to the application of s 191 to the Crown and its ships see PARA 1065.

- 8 le the limitation of liability under the Merchant Shipping Act 1995 s 191: see s 191(3).
- 9 Merchant Shipping Act 1995 s 191(3).
- 10 le the provisions of the Merchant Shipping Act 1995 s 191: see s 191(4).
- 11 le any such personal act or omission as is mentioned in the Convention on Limitation of Liability for Maritime Claims art 4 (see PARA 1046): see the Merchant Shipping Act 1995 s 191(4).
- 12 Merchant Shipping Act 1995 s 191(1), (4).
- 13 Merchant Shipping Act 1995 s 191(8).

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(6) APPLICATION OF LIABILITY PROVISIONS TO THE CROWN AND ITS SHIPS

1065. General application of liability provisions to Crown and its ships.

The provisions relating to the limitation of liability for maritime claims¹, exclusion of liability², apportionment of liability for damage or loss³, joint and several liability for loss of life or personal injuries⁴, the right of contribution for loss of life or personal injuries⁵ and the time limit for proceedings against the owners or the ship⁶ apply in the case of Her Majesty's ships⁷ as they apply in relation to other ships; and the provisions relating to the limitation of liability of a harbour or conservancy authority or the owners of a dock or canal⁸ apply to the Crown in its capacity as such an authority or owner⁹.

1 Ie the Merchant Shipping Act 1995 s 185 (see PARA 1042): see s 192(1).

2 Ie the Merchant Shipping Act 1995 s 186 (see PARA 1059): see s 192(1).

3 Ie the Merchant Shipping Act 1995 s 187 (see PARA 1060): see s 192(1).

4 Ie the Merchant Shipping Act 1995 s 188 (see PARA 1061): see s 192(1).

5 Ie the Merchant Shipping Act 1995 s 189 (see PARA 1062): see s 192(1).

6 Ie the Merchant Shipping Act 1995 s 190 (see PARA 1063), except s 190(6) (which allows for extension of time to arrest a defendant ship in certain circumstances): see s 192(1).

7 For these purposes, 'Her Majesty's ships' means: (1) ships of which the beneficial interest is vested in Her Majesty; (2) ships which are registered as government ships; (3) ships which are for the time being demised or sub-demised to or in the exclusive possession of the Crown; but it does not include any ship in which Her Majesty is interested otherwise than in right of Her government in the United Kingdom unless that ship is for the time being demised or sub-demised to Her Majesty in right of Her government in the United Kingdom or in the exclusive possession of Her Majesty in that right: Merchant Shipping Act 1995 s 192(2). As to the meaning of 'ship' see PARA 229; and as to the meaning of 'government ship' see PARA 20 note 3.

8 Ie the Merchant Shipping Act 1995 s 191 (see PARA 1064): see s 192(1).

9 Merchant Shipping Act 1995 s 192(1).

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(7) REQUIREMENT FOR INSURANCE OR SECURITY AGAINST LIABILITIES

1066. Regulations requiring insurance or security.

The Secretary of State¹ may make regulations² requiring that, in such cases as may be prescribed by the regulations, while a ship³ is in United Kingdom waters⁴, there must be in force in respect of the ship⁵:

- 1204 (1) a contract of insurance insuring such person or persons as may be specified by the regulations against such liabilities as may be so specified and satisfying such other requirements as may be so specified⁶; or
- 1205 (2) such other security relating to those liabilities as satisfies requirements specified by or under the regulations⁷.

Such regulations must not apply in relation to:

- 1206 (a) a qualifying foreign ship⁸ while it is exercising the right of innocent passage⁹ or the right of transit passage¹⁰ through straits used for international navigation¹¹;
- 1207 (b) any warship¹²; or
- 1208 (c) any ship for the time being used by the government of any state for other than commercial purposes¹³.

Such regulations may not require insurance or security to be maintained in respect of a ship in relation to any liability in any case where an obligation to maintain insurance or security in respect of that ship in relation to that liability is imposed under the provisions relating to compulsory insurance against liability for oil pollution¹⁴ or by an Order in Council under the provisions¹⁵ relating to the carriage of hazardous and noxious substances¹⁶.

Such regulations may require that, where a person is obliged to have in force in respect of a ship a contract of insurance or other security, such documentary evidence as may be specified by or under the regulations of the existence of the contract of insurance or other security must be carried in the ship and produced on demand, by such persons as may be specified in the regulations, to such persons as may be so specified¹⁷.

Such regulations may provide:

- 1209 (i) that in such cases as are prescribed a ship which contravenes the regulations is liable to be detained and that the provisions relating to enforcing the detention of a ship¹⁸ are to have effect, with such modifications, if any, as are prescribed by the regulations, in relation to the ship¹⁹;
- 1210 (ii) that a contravention of the regulations is an offence punishable, on conviction on indictment, by a fine and, on summary conviction, by a fine of an amount not exceeding £50,000 or such less amount as is prescribed by the regulations²⁰; and

- 1211 (iii) that any such contravention is an offence punishable only on summary conviction by a fine of an amount not exceeding £50,000, or such less amount as is prescribed by the regulations²¹.

Such regulations may:

- 1212 (A) make different provision for different cases²²;
 1213 (B) make provision in terms of any document which the Secretary of State or any person considers relevant from time to time²³; and
 1214 (C) include such incidental, supplemental and transitional provision as appears to the Secretary of State to be expedient for the purposes of the regulations²⁴.

1 As to the Secretary of State see PARA 38.

2 As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41. As to the regulations that have been made under the Merchant Shipping Act 1995 s 192A see the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209; and PARA 1067.

3 As to the meaning of 'ship' see PARA 229.

4 As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

5 Merchant Shipping Act 1995 s 192A(1) (s 192A added by the Merchant Shipping and Maritime Security Act 1997 s 16). The Merchant Shipping Act 1995 s 192A(1) is subject to s 192A(2), (3) (see the text and notes 8-16): see s 192A(1) (as so added).

6 Merchant Shipping Act 1995 s 192A(1)(a) (as added: see note 5).

7 Merchant Shipping Act 1995 s 192A(1)(b) (as added: see note 5).

8 As to the meaning of 'qualifying foreign ship' see PARA 19.

9 As to the meaning of 'right of innocent passage' see PARA 68 note 10.

10 As to the meaning of 'right of transit passage' see PARA 68 note 11.

11 Merchant Shipping Act 1995 s 192A(2)(a) (as added: see note 5). As to the meaning of 'straits used for international navigation' see PARA 68 note 12.

12 Merchant Shipping Act 1995 s 192A(2)(b) (as added: see note 5).

13 Merchant Shipping Act 1995 s 192A(2)(c) (as added: see note 5).

14 Ie imposed by the Merchant Shipping Act 1995 s 163 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 453): see s 192A(3) (as added: see note 5).

15 Ie under the Merchant Shipping Act 1995 s 182B (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 472): see s 192A(3) (as added: see note 5).

16 Merchant Shipping Act 1995 s 192A(3) (as added: see note 5).

17 Merchant Shipping Act 1995 s 192A(4) (as added: see note 5).

18 Ie the Merchant Shipping Act 1995 s 284 (see PARA 1253): see s 192A(5)(a) (as added: see note 5).

19 Merchant Shipping Act 1995 s 192A(5)(a) (as added: see note 5).

20 Merchant Shipping Act 1995 s 192A(5)(b) (as added: see note 5).

21 Merchant Shipping Act 1995 s 192A(5)(c) (as added: see note 5).

22 Merchant Shipping Act 1995 s 192A(6)(a) (as added: see note 5).

- 23 Merchant Shipping Act 1995 s 192A(6)(b) (as added: see note 5).
- 24 Merchant Shipping Act 1995 s 192A(6)(c) (as added: see note 5).

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1067. Compulsory insurance etc for ships receiving trans-shipped fish.

The owner, charterer and master of a ship, in respect of which a transshipment licence¹ is in force, must ensure that there is in force in respect of the ship, while it is in United Kingdom waters, a contract of insurance which is sufficient for these purposes² and which insures the owner against the following liabilities³, namely:

- 1215 (1) any liability⁴ for pollution caused by oil (other than oil from tankers or bunker oil etc)⁵;
- 1216 (2) any liability for the costs of any operation to remove or render harmless the ship, or any article which had been on the ship, taken under the powers conferred on harbour and conservancy authorities⁶ in relation to wrecks⁷, or under the powers conferred on general lighthouse authorities⁸ in relation to wrecks⁹, or taken under corresponding powers under any statutory provision of local application¹⁰;
- 1217 (3) any liability for payment of salvage awards¹¹ and special compensation¹² under the International Convention on Salvage 1989¹³; and
- 1218 (4) any liability for the cost of providing relief to, and of repatriating, seamen left behind or shipwrecked¹⁴.

However, in place of a contract of insurance, there may be in force such other form of security which is sufficient for these purposes¹⁵ and which will enable the owner to meet the liabilities mentioned in heads (1) to (4) above¹⁶.

Any contravention of the requirements to have compulsory insurance in place (or to have such other form of security which meets those same requirements)¹⁷ is an offence¹⁸.

These requirements¹⁹ are without prejudice to any entitlement to limit liability for maritime claims²⁰ and contracts of insurance and security may be limited accordingly²¹.

Where a person is so required²² to ensure that there is in force a contract of insurance or other security, documentary evidence of compliance with this requirement must be carried in the ship²³; and the master and any other officer on the ship must produce on demand such documentary evidence to any relevant inspector²⁴. Any contravention of the requirements to carry or to produce on demand such documents²⁵ is an offence²⁶.

1 For these purposes, 'transshipment licence' means a licence under the Sea Fish (Conservation) Act 1967 s 4A (prohibition of transshipment of fish unless authorised by a licence) (see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 986): Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 2. As to the general requirements to be met by ships in respect of which transshipment licences are in force see PARAS 669, 670.

2 Ie a contract of insurance complying with the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 6: see reg 4(1). Accordingly, a contract of insurance, or other security (see the text and notes 15-16), is sufficient for the purpose of the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, only if it satisfies all requirements (whether as to the person issuing it, the amount of compensation available, or for any other reason) as is specified in Merchant Shipping Notice No MSN 1711: see the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 6. For these purposes, 'Merchant Shipping Notice MSN No 1711' means the Notice described as such, issued by the Secretary of State,

and includes a reference to any document amending or replacing it which is considered by the Secretary of State to be relevant from time to time: Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 2. As to the Secretary of State see PARA 38. Merchant Shipping Notice 1711(M+F) ('Compulsory Insurance for Ships receiving trans-shipped Fish') specifies the forms of insurance and security satisfying the requirement of the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209; specifies the format of documentary evidence of compliance with the regulations which must be carried on board the ship; and provides information on the enforcement of the regulations.

3 See the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, regs 3, 4(1).

4 Ie under the Merchant Shipping Act 1995 s 154 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 444): see the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 5(a).

5 Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 5(a).

6 As to the meaning of 'conservancy authority' see PARA 71 note 2; and as to the meaning of 'harbour authority' see PARA 68 note 4.

7 Ie the powers conferred by the Merchant Shipping Act 1995 s 252 (see PARA 1008): see the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 5(b).

8 As to the meaning of 'general lighthouse authority' see PARA 1068.

9 Ie the powers conferred by the Merchant Shipping Act 1995 s 253 (see PARA 1009): see the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 5(b).

10 Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 5(b).

11 Ie under the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526) art 12 (see PARA 903) or under art 13 (see PARA 904): see the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 5(c).

12 Ie under the International Convention on Salvage 1989 art 14 (see PARA 905): see the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 5(c).

13 Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 5(c).

14 Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 5(d). As to the relief and repatriation of seamen see PARA 527 et seq.

15 Ie which complies with the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 6 (see note 2): see reg 4(2).

16 Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 4(2).

17 Ie any contravention of the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 4 (see the text and notes 1-16): see reg 8(1).

18 See the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 8(1); and PARA 1188.

19 Ie the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 4(1), (2) (see the text and notes 1-16): see reg 4(3).

20 Ie the entitlement to limit liability provided by the Merchant Shipping Act 1995 s 185 (see PARA 1042): see the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 4(3).

21 Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 4(3).

22 lie under the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209: see reg 7(1).

23 Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 7(1). Such documentary evidence must be in the form specified in Merchant Shipping Notice 1711(M+F) (see note 2): see the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 7(1).

24 Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 7(2). The reference in the text to any relevant inspector is to any person mentioned in the Merchant Shipping Act 1995 s 258(1)(a), (b) or (c) (see PARA 48): see the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 7(2).

25 lie any contravention of the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 7 (see the text and notes 22-24): see reg 8(2).

26 See the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 8(2); and PARA 1188.

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13. LIGHTHOUSE AUTHORITIES

(1) THE DIFFERENT LIGHTHOUSE AUTHORITIES

1068. Meanings of 'general lighthouse authorities' and 'local lighthouse authorities'.

For the purposes of the Merchant Shipping Act 1995 provisions which relate to lighthouses¹:

- 1219 (1) the Trinity House², as respects England and Wales³ and the adjacent seas and islands⁴;
- 1220 (2) the Commissioners of Northern Lighthouses⁵, as respects Scotland and the adjacent seas and islands⁶; and
- 1221 (3) the Commissioners of Irish Lights⁷, as respects Northern Ireland and the adjacent seas and islands⁸,

are the 'general lighthouse authority'⁹.

For the purposes of the Merchant Shipping Act 1995 provisions which relate to lighthouses¹⁰:

- 1222 (a) each statutory harbour authority¹¹, as respects its area¹²; and
- 1223 (b) any other existing local lighthouse authority, as respects its area¹³,

are the 'local lighthouse authority'¹⁴.

1 For the purposes of the Merchant Shipping Act 1995 Pt VIII (ss 193-223) (see also PARA 1069 et seq): see s 193(1). For these purposes, 'lighthouse' includes any floating and other light exhibited for the guidance of ships, and also any sirens and any other description of fog signals, and also any addition to a lighthouse of any improved light, or any siren, or any description of fog signal (s 223(1)); and any reference to a lighthouse includes its appurtenances (s 223(2)). As to the meaning of 'ship' see PARA 229.

2 As to the meaning of 'Trinity House' see PARA 1069. Subject to the Merchant Shipping Act 1995 s 314(3), Sch 14 para 9(1), the Trinity House is also the general lighthouse authority as respects Gibraltar and, subject to Sch 14 para 9(2), the Channel Islands, and the seas adjacent thereto: s 193(5). Section 193(5) ceases to have effect on such day or days as the Secretary of State by order appoints: Sch 14 para 9(1). Accordingly, until that day, the powers of the Trinity House under Pt VIII (see also PARA 1069 et seq) with respect to lighthouses, buoys and beacons in the islands of Guernsey or Jersey, other than their powers under s 204 (see PARA 1082) and s 220 (see PARA 1247), may not be exercised without the consent of Her Majesty in Council (Sch 14 para 9(2)); and any such Order in Council must be laid before Parliament (Sch 14 para 9(4)). Until that day, no dues for any lighthouse, buoy or beacon erected or placed in or near the islands of Guernsey, Jersey, Sark or Alderney may be levied in the islands of Guernsey or Jersey without the consent of the States of those Islands respectively: Sch 14 para 9(3). As to the Secretary of State see PARA 38; and as to the making of orders by the Secretary of State under the Merchant Shipping Act 1995 generally see PARA 41.

For these purposes, 'buoys and beacons' includes all other marks and signs of the sea (s 223(1)); and any reference to a buoy or beacon includes its appurtenances (s 223(2)). The Secretary of State may by order provide that references or a particular reference to a buoy or beacon in Pt VIII are or is to be construed as including, in such circumstances as are specified in the order, equipment of a kind so specified which is intended as an aid in the navigation of ships: s 223(3). However, no such order may be made unless a draft of the order has been laid before and approved by resolutions of each House of Parliament: s 223(4). In exercise of the powers so conferred by s 223(3), the Secretary of State has made the General Lighthouse Authorities (Beacons: Maritime Differential Correction Systems) Order 1997, SI 1997/3016, and the General Lighthouse

Authorities (Beacons: Automatic Identification System) Order 2006, SI 2006/1977; and, by virtue of the Interpretation Act 1978 s 17(2)(b), the General Lighthouse Authorities (Beacons: Hyperbolic Systems) Order 1986, SI 1986/2285, and the General Lighthouse Authorities (Beacons: Hyperbolic Systems) Order 1991, SI 1991/347, have effect as if so made. Accordingly, all references to a beacon in the Merchant Shipping Act 1995 Pt VIII are to be construed as including:

- 2 (1) equipment provided for broadcasts in the frequency range 70kHz-130kHz from the North British, North Scottish, Hebridean, Northumbrian, English and South West British transmitter chains of the Racal-Decca Marine Navigation Limited's hyperbolic electronic position-fixing system, known as the Decca Navigator System, together with the support facilities provided by that company for those chains, in the circumstances that, and for so long as, those chains are operated in accordance with any contract in that behalf between that company and the general lighthouse authorities (General Lighthouse Authorities (Beacons: Hyperbolic Systems) Order 1986, SI 1986/2285, art 2; Interpretation Act 1978 s 17(2)(b));
- 3 (2) in the circumstances that the United Kingdom is party to an international agreement concerning the establishment and operation of the Loran C system, equipment and support facilities provided for broadcasts in the frequency range 90kHz-100kHz from any transmitters situate in the United Kingdom which form part of a position-fixing system known as the Loran C system (General Lighthouse Authorities (Beacons: Hyperbolic Systems) Order 1991, SI 1991/347, art 2(1), (2); Interpretation Act 1978 s 17(2)(b));
- 4 (3) equipment provided for broadcasts in the medium frequency range 283.5kHz-315kHz from any transmitter situated in the United Kingdom where such equipment forms part of a maritime differential position-fixing, integrity monitoring and data carrying system based on real-time corrections to signals emanating from a global satellite system (General Lighthouse Authorities (Beacons: Maritime Differential Correction Systems) Order 1997, SI 1997/3016, art 2);
- 5 (4) equipment provided for broadcasts in the frequency range 156.025MHz-162.025MHz where such equipment forms part of a system for providing information to ships about the type, position and functioning of aids to the navigation of ships, or to assist the general lighthouse authorities in the efficient provision of aids to the navigation of ships (General Lighthouse Authorities (Beacons: Automatic Identification System) Order 2006, SI 2006/1977, art 2).

As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

4 Merchant Shipping Act 1995 s 193(1)(a).

5 As to the Commissioners of Northern Lighthouses see PARA 1070. Subject to the Merchant Shipping Act 1995 Sch 14 para 9(1) (as to which see note 2), the Commissioners of Northern Lighthouses are also the general lighthouse authority as respects the Isle of Man, and the seas adjacent thereto: see s 193(5) (prospectively repealed: see note 2).

6 Merchant Shipping Act 1995 s 193(1)(b).

7 As to the meaning of 'Commissioners of Irish Lights' see PARA 1071.

8 Merchant Shipping Act 1995 s 193(1)(c).

9 Merchant Shipping Act 1995 s 193(1).

10 Ie for the purposes of the Merchant Shipping Act 1995 Pt VIII (see also PARA 1069 et seq): see s 193(2).

11 As to the meaning of 'statutory harbour authority' see PARA 68 note 4.

12 Merchant Shipping Act 1995 s 193(2)(a) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 6(a)). For these purposes, 'area' means:

- 6 (1) in relation to a general lighthouse authority specified in s 193(1)(a), (b) or (c) (see heads (1) to (3) in the text), the area specified therein as the area of that authority (s 193(4)(a));
- 7 (2) in relation to a statutory harbour authority, the area or areas inside the limits within which the authority's statutory powers and duties as a harbour authority are exercisable (s 193(4)(b) (amended by the Merchant Shipping and Maritime Security Act 1997 ss 29(1), 31(3), Sch 6 para 6(b))); and

- 8 (3) in relation to any other existing local lighthouse authority, the existing area over which its authority extends in relation to lighthouses, buoys and beacons (Merchant Shipping Act 1995 s 193(4)(c));

and, for the purposes of s 193(2)(b) (see head (b) in the text) and s 193(4)(c) (see head (3) above), 'existing' means existing for the purposes of the Merchant Shipping Act 1894 immediately before the repeal of that Act by the Merchant Shipping Act 1995 (ss 193(4), 223(1)).

13 Merchant Shipping Act 1995 s 193(2)(b).

14 Merchant Shipping Act 1995 s 193(2).

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1069. The Trinity House.

For the purposes of the Merchant Shipping Act 1995 provisions which relate to lighthouses¹, the 'Trinity House' means the master, wardens and assistants of the guild, fraternity or brotherhood of the most glorious and undivided Trinity and of St Clement in the parish of Deptford Strond in the county of Kent, commonly called the corporation of the Trinity House of Deptford Strond².

The Trinity House was incorporated by royal charter in 1514³.

¹ For the purposes of the Merchant Shipping Act 1995 Pt VIII (ss 193-223) (see also PARAS 1068, 1070 et seq): see s 223(1). As to the meaning of 'lighthouse' see PARA 1068 note 1.

² See the Merchant Shipping Act 1995 s 223(1).

³ See Letters Patent of Henry VIII dated 20 May 1514, confirmed by Letters Patent of James II dated 8 July 1685. There are two other Trinity Houses in existence in England, which are quite separate organisations from the Trinity House of Deptford Strond, namely: (1) the corporation of the Newcastle upon Tyne Trinity House, which has been dedicated to the welfare of seafarers on the North-East coast since the Charter of Incorporation was granted by Henry VIII in 1536; and (2) the Trinity House of Kingston-upon-Hull.

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1070. The Commissioners of Northern Lighthouses.

The Commissioners of Northern Lighthouses continue to exist under that name as a body corporate constituted as follows¹.

The following persons holding the following offices constitute the Commissioners of Northern Lighthouses, that is to say²:

- 1224 (1) the Lord Advocate and the Solicitor-General for Scotland³;
- 1225 (2) the lords provosts of Edinburgh, Glasgow and Aberdeen, and the conveners of the councils for Highland and Argyll and Bute⁴;
- 1226 (3) the sheriffs principal of all the sheriffdoms in Scotland⁵;
- 1227 (4) a person nominated by the Lieutenant Governor of the Isle of Man and appointed by the Secretary of State⁶;
- 1228 (5) any person elected under head (a) or head (b) below⁷.

The Commissioners may elect, as members of their body:

- 1229 (a) the convener of any council whose area includes any part of the coasts of Scotland⁸;
- 1230 (b) not more than five other persons, but a person may not be so elected unless either he appears to the Commissioners to have special knowledge and experience of nautical matters or three persons who so appear are members of that body⁹.

A person appointed by the Secretary of State under head (4) above, or a person appointed by the Commissioners under head (b) above, holds office for three years, but is eligible for reappointment¹⁰.

Any five of the Commissioners constitute a quorum¹¹; and the Commissioners constituting a quorum have power to do all such matters and things as might be done by the whole body¹².

1 See the Merchant Shipping Act 1995 s 193(3), Sch 8 para 1(1).

2 See the Merchant Shipping Act 1995 Sch 8 para 1(2).

3 See the Merchant Shipping Act 1995 Sch 8 para 1(2)(a).

4 See the Merchant Shipping Act 1995 Sch 8 para 1(2)(b).

5 See the Merchant Shipping Act 1995 Sch 8 para 1(2)(c).

6 See the Merchant Shipping Act 1995 Sch 8 para 1(2)(d). As to the Secretary of State see PARA 38.

7 See the Merchant Shipping Act 1995 Sch 8 para 1(2)(e).

8 See the Merchant Shipping Act 1995 Sch 8 para 2(1).

9 See the Merchant Shipping Act 1995 Sch 8 para 2(2).

- 10 See the Merchant Shipping Act 1995 Sch 8 para 3.
- 11 See the Merchant Shipping Act 1995 Sch 8 para 4(1).
- 12 See the Merchant Shipping Act 1995 Sch 8 para 4(2).

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1071. The Commissioners of Irish Lights.

For the purposes of the Merchant Shipping Act 1995 provisions which relate to lighthouses¹, the 'Commissioners of Irish Lights' means the body incorporated by that name under the local Act of the session held in the thirtieth and thirty-first years of the reign of Queen Victoria intituled 'An Act to alter the constitution of the Corporation for preserving and improving the port of Dublin and for other purposes connected with that body and with the Port of Dublin Corporation'².

1 le for the purposes of the Merchant Shipping Act 1995 Pt VIII (ss 193-223) (see also PARAS 1068 et seq, 1072 et seq): see s 223(1). As to the meaning of 'lighthouse' see PARA 1068 note 1.

2 See the Merchant Shipping Act 1995 s 223(1).

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(2) FUNCTIONS OF THE SECRETARY OF STATE

1072. Returns and information to the Secretary of State.

Every general lighthouse authority¹ and its officers must give to the Secretary of State² all such returns, explanations or information in relation to the lighthouses³, buoys or beacons⁴ within its area⁵ and its management as the Secretary of State requires⁶.

1 As to the meaning of 'general lighthouse authority' see PARA 1068.

2 As to the Secretary of State see PARA 38.

3 As to the meaning of 'lighthouse' see PARA 1068 note 1.

4 As to the meaning of 'buoys and beacons' see PARA 1068 note 2.

5 As to the meaning of 'area' see PARA 1068 note 12.

6 Merchant Shipping Act 1995 s 194.

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1073. Powers of inspection by the Secretary of State.

The Secretary of State¹, on complaint that any lighthouse², buoy or beacon³ under the management of a general lighthouse authority⁴, or any work connected with it, is inefficient, improperly managed or unnecessary, may authorise any persons appointed by him to inspect the lighthouse, buoy or beacon or any connected work⁵.

A person so authorised may inspect the lighthouse, buoy or beacon and may make any inquiries which he thinks fit as to the lighthouse, buoy or beacon and its management⁶.

All officers and others having the care, or concerned in the management, of any lighthouse, buoy or beacon in relation to which such powers of inspection⁷ are being exercised must furnish any information and explanations in relation to it and its management which the person inspecting it requires⁸.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'lighthouse' see PARA 1068 note 1.

3 As to the meaning of 'buoys and beacons' see PARA 1068 note 2.

4 As to the meaning of 'general lighthouse authority' see PARA 1068.

5 Merchant Shipping Act 1995 s 200(1).

6 Merchant Shipping Act 1995 s 200(2).

7 le powers under the Merchant Shipping Act 1995 s 200: see s 200(3).

8 Merchant Shipping Act 1995 s 200(3).

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(3) FUNCTIONS OF GENERAL LIGHTHOUSE AUTHORITIES

1074. General function of management of lighthouses etc.

The general lighthouse authorities¹ have² the superintendence and management of all lighthouses³, buoys and beacons⁴ within their respective areas⁵.

The general lighthouse authorities continue⁶ to hold and maintain all property vested in them on 1 January 1996 in the same manner and for the same purpose as before⁷.

1 As to the meaning of 'general lighthouse authority' see PARA 1068.

2 le subject to the provisions of the Merchant Shipping Act 1995 ss 196-223 (see also PARAS 1073, 1075 et seq) and to the powers and rights of any local lighthouse authority: see s 195(1). As to the meaning of 'local lighthouse authority' see PARA 1068.

3 As to the meaning of 'lighthouse' see PARA 1068 note 1.

4 As to the meaning of 'buoys and beacons' see PARA 1068 note 2.

5 Merchant Shipping Act 1995 s 195(1). As to the meaning of 'area' see PARA 1068 note 12.

6 le subject to the provisions of the Merchant Shipping Act 1995 ss 196-223 (see also PARAS 1073, 1075 et seq): see s 195(2).

7 Merchant Shipping Act 1995 s 195(2). The date of 1 January 1996 is that on which the Merchant Shipping Act 1995 was commenced: see s 316(2).

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1075. Joint discharge of functions of general lighthouse authorities.

Two or more general lighthouse authorities¹ may discharge any of their functions jointly²; and for that purpose:

- 1231 (1) those authorities may share any part of their respective establishments³; and
- 1232 (2) any of them may, in the area⁴ of another and on that other's behalf, execute any works or do any other thing which the authority has power to execute or do in its own area⁵;

and any enactment relating to the functions in question or to the authorities by which or the areas in which those functions are to be discharged is to be construed accordingly⁶.

Any expenses incurred by any of the general lighthouse authorities in pursuance of the above provisions must be apportioned between that authority and the other authority concerned in such manner as may be agreed between them or, in default of agreement, determined by the Secretary of State⁷.

1 As to the meaning of 'general lighthouse authority' see PARA 1068.

2 Merchant Shipping Act 1995 s 196(1).

3 Merchant Shipping Act 1995 s 196(1)(a).

4 As to the meaning of 'area' see PARA 1068 note 12.

5 Merchant Shipping Act 1995 s 196(1)(b).

6 Merchant Shipping Act 1995 s 196(1).

7 Merchant Shipping Act 1995 s 196(2). As to the Secretary of State see PARA 38.

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1076. General powers of general lighthouse authority.

A general lighthouse authority¹ has power, within its area²:

- 1233 (1) to erect or place any lighthouse³, with all requisite works, roads and appurtenances⁴;
- 1234 (2) to add to, alter, or remove any lighthouse⁵;
- 1235 (3) to erect or place any buoy or beacon⁶, or alter or remove any buoy or beacon⁷;
- 1236 (4) to vary the character of any lighthouse or the mode of exhibiting lights therein⁸.

However, a general lighthouse authority must not, in the area of a statutory harbour authority⁹:

- 1237 (a) erect or place any lighthouse, works, roads or appurtenances under head (1) above¹⁰; or
- 1238 (b) erect or place any buoy or beacon under head (3) above¹¹,

except in pursuance of a direction given by the Secretary of State¹². The Secretary of State may give such a direction to a general lighthouse authority if he considers it appropriate to do so in the interests of general navigation¹³.

Where any improved light or beacon, or any siren or any description of fog signal has been added to an existing lighthouse, the light or beacon, siren or fog signal may be treated¹⁴ as if it were a separate lighthouse¹⁵.

A general lighthouse authority may acquire any land which may be necessary for the exercise of its statutory powers under heads (1) to (4) above, for the maintenance of its works or for the residence of the light keepers¹⁶; and a general lighthouse authority may sell or lease any land belonging to it¹⁷.

Where it appears to a general lighthouse authority that any of its assets which is held in connection with the discharge of its general statutory functions¹⁸ has spare capacity¹⁹, it may, with the consent of the Secretary of State²⁰, enter into an agreement for the purpose of exploiting that spare capacity²¹. A general lighthouse authority must send to the Secretary of State a copy of every agreement so entered into²².

1 As to the meaning of 'general lighthouse authority' see PARA 1068.

2 Merchant Shipping Act 1995 s 197(1). Section 197(1) is subject to s 197(2) (see the text and notes 9-12): see s 197(1). As to the meaning of 'area' see PARA 1068 note 12.

3 As to the meaning of 'lighthouse' see PARA 1068 note 1.

4 Merchant Shipping Act 1995 s 197(1)(a).

5 Merchant Shipping Act 1995 s 197(1)(b).

6 As to the meaning of 'buoys and beacons' see PARA 1068 note 2.

7 Merchant Shipping Act 1995 s 197(1)(c).

8 Merchant Shipping Act 1995 s 197(1)(d).

9 Merchant Shipping Act 1995 s 197(2) (amended by the Merchant Shipping and Maritime Security Act 1997 s 29(1), Sch 6 para 7). As to the meaning of 'statutory harbour authority' see PARA 68 note 4.

10 Merchant Shipping Act 1995 s 197(2)(a).

11 Merchant Shipping Act 1995 s 197(2)(b).

12 Merchant Shipping Act 1995 s 197(2). As to the Secretary of State see PARA 38; and as to the Secretary of State's power to give directions under the Merchant Shipping Act 1995 see PARA 41.

13 Merchant Shipping Act 1995 s 197(3).

14 le for the purposes of the Merchant Shipping Act 1995 Pt VIII (ss 193-223) (lighthouses) (see also PARAS 1068 et seq, 1077 et seq): see s 197(4).

15 Merchant Shipping Act 1995 s 197(4).

16 Merchant Shipping Act 1995 s 197(5). For the purposes of the acquisition of land by a general lighthouse authority under s 197(5), if the land is in England and Wales, the provisions of the Compulsory Purchase Act 1965 Pt I (ss 1-32) (so far as applicable) apply, except ss 4-8, 27, 31 (see **COMPULSORY ACQUISITION OF LAND**): see the Merchant Shipping Act 1995 s 197(6)(a). As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

As to permitted development for the purposes of the functions of a general or local lighthouse authority see the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17 Class I (lighthouse undertakings); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 349, 350.

17 Merchant Shipping Act 1995 s 197(7) (amended by the Merchant Shipping and Maritime Security Act 1997 s 19(1)).

18 le under the Merchant Shipping Act 1995 s 195 (see PARA 1074): see s 197(8) (s 197(8)-(11) added by the Merchant Shipping and Maritime Security Act 1997 s 19(2)).

19 For these purposes, an asset has spare capacity if:

9 (1) during any period there are times (or there is a time) when it is not needed in connection with the discharge of the general lighthouse authority's functions under the Merchant Shipping Act 1995 s 195 (see PARA 1074) (s 197(9)(a) (as added: see note 18));

10 (2) there is any period when it is not being used to its full capacity in connection with the discharge of those functions (s 197(9)(b) (as added: see note 18)); or

11 (3) it has ceased to be used in connection with the discharge of those functions but it is not for the time being expedient to realise the asset (s 197(9)(c) (as added: see note 18)).

20 Any consent under the Merchant Shipping Act 1995 s 197(8) may be given either unconditionally or subject to conditions, and either in relation to a particular case or in relation to such description of cases as may be specified in the consent: s 197(10) (as added: see note 18).

21 Merchant Shipping Act 1995 s 197(8) (as added: see note 18).

22 Merchant Shipping Act 1995 s 197(11) (as added: see note 18). The text refers to every agreement entered into by the general lighthouse authority by virtue of s 197(8) (see the text and notes 18-21): see s 197(11) (as so added).

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1077. Inspection of local lighthouses.

It is the duty of the general lighthouse authority¹ for any area², or of any person authorised by that authority for the purpose, to³:

- 1239 (1) inspect all lighthouses⁴, buoys and beacons⁵ situated within its area but belonging to or under the management of any local lighthouse authority⁶; and
- 1240 (2) make such inquiries about them and their management as it thinks fit⁷.

All officers and others having the care, or concerned in the management, of any such local lighthouses, buoys or beacons must furnish all such information and explanations concerning them as the general lighthouse authority requires⁸.

All local lighthouse authorities and their officers must give to the general lighthouse authority all such returns, explanations or information concerning the lighthouses, buoys and beacons under their management and the management of them as the general lighthouse authority may require⁹.

The general lighthouse authority must:

- 1241 (a) communicate to each local lighthouse authority the results of its inspection of its lighthouses, buoys and beacons¹⁰; and
- 1242 (b) make to the Secretary of State¹¹ general reports of the results of the inspection of local lighthouses, buoys and beacons¹².

1 As to the meaning of 'general lighthouse authority' see PARA 1068.

2 As to the meaning of 'area' see PARA 1068 note 12.

3 Merchant Shipping Act 1995 s 198(1).

4 As to the meaning of 'lighthouse' see PARA 1068 note 1.

5 As to the meaning of 'buoys and beacons' see PARA 1068 note 2.

6 Merchant Shipping Act 1995 s 198(1)(a). As to the meaning of 'local lighthouse authority' see PARA 1068.

7 Merchant Shipping Act 1995 s 198(1)(b).

8 Merchant Shipping Act 1995 s 198(2).

9 Merchant Shipping Act 1995 s 198(3).

10 Merchant Shipping Act 1995 s 198(4)(a).

11 As to the Secretary of State see PARA 38.

12 Merchant Shipping Act 1995 s 198(4)(b).

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1078. Control of local lighthouse authorities.

A general lighthouse authority¹ may, within its area², with the consent of the Secretary of State³, direct a local lighthouse authority⁴:

- 1243 (1) to lay down buoys⁵;
- 1244 (2) to remove or discontinue any lighthouse⁶, buoy or beacon⁷; or
- 1245 (3) to make any variation in the character of any lighthouse, buoy or beacon or in the mode of exhibiting lights in any lighthouse, buoy or beacon⁸;

but the authority must not give a direction without first giving due notice of its intention to do so⁹. Such a direction must be given in writing; and it is the duty of a local lighthouse authority to which such a direction is given to comply with it¹⁰.

A local lighthouse authority must not, without the consent of the general lighthouse authority:

- 1246 (a) erect or place any lighthouse, buoy or beacon¹¹;
- 1247 (b) remove or discontinue any lighthouse, buoy or beacon¹²;
- 1248 (c) vary the character of any lighthouse, buoy or beacon or the mode of exhibiting lights in any lighthouse, buoy or beacon¹³.

Nothing in these provisions¹⁴ applies to local buoys and beacons placed or erected for temporary purposes¹⁵.

1 As to the meaning of 'general lighthouse authority' see PARA 1068.

2 As to the meaning of 'area' see PARA 1068 note 12.

3 As to the Secretary of State see PARA 38.

4 Merchant Shipping Act 1995 s 199(1). As to the meaning of 'local lighthouse authority' see PARA 1068.

5 Merchant Shipping Act 1995 s 199(1)(a). As to the meaning of 'buoys and beacons' see PARA 1068 note 2.

6 As to the meaning of 'lighthouse' see PARA 1068 note 1.

7 Merchant Shipping Act 1995 s 199(1)(b).

8 Merchant Shipping Act 1995 s 199(1)(c).

9 Merchant Shipping Act 1995 s 199(1). As to service of documents under the Merchant Shipping Act 1995 see PARA 73.

10 Merchant Shipping Act 1995 s 199(3).

11 Merchant Shipping Act 1995 s 199(2)(a).

12 Merchant Shipping Act 1995 s 199(2)(b).

13 Merchant Shipping Act 1995 s 199(2)(c).

- 14 le nothing in the Merchant Shipping Act 1995 s 199: see s 199(4).
- 15 Merchant Shipping Act 1995 s 199(4).

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1079. Disclosure of information to general lighthouse authorities.

No obligation as to secrecy or other restriction on the disclosure of information (whether imposed by statute or otherwise) prevents a Minister of the Crown¹ from disclosing to a general lighthouse authority², or to a person appointed by a general lighthouse authority to collect general light dues³, information for the purpose of enabling or assisting the authority to discharge its functions under the Merchant Shipping Act 1995 provisions⁴ which relate to lighthouses⁵.

Information so obtained by any person must not be disclosed by him to any other person, except where the disclosure is made to a general lighthouse authority, or to a person appointed by such an authority to collect general light dues, or for the purposes of any legal proceedings arising out of the Merchant Shipping Act 1995 provisions⁶ which relate to lighthouses⁷.

1 As to the meaning of 'Minister of the Crown' see PARA 71 note 6.

2 As to the meaning of 'general lighthouse authority' see PARA 1068.

3 As to the meaning of 'general light dues' see PARA 1083.

4 I.e the Merchant Shipping Act 1995 Pt VIII (ss 193-223) (see PARAS 1068 et seq, 1080 et seq): see s 222A(1) (s 222A added by the Merchant Shipping and Maritime Security Act 1997 s 20). As to the meaning of 'lighthouse' see PARA 1068 note 1.

5 Merchant Shipping Act 1995 s 222A(1) (as added: see note 4).

6 I.e the Merchant Shipping Act 1995 Pt VIII (see PARAS 1068 et seq, 1080 et seq): see s 222A(2) (as added: see note 4).

7 Merchant Shipping Act 1995 s 222A(2) (as added: see note 4).

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(4) POWERS OF HARBOUR AUTHORITIES AS LOCAL LIGHTHOUSE AUTHORITIES

1080. Powers of harbour authorities.

Every statutory harbour authority¹ has power to carry out harbour operations², consisting of the marking or lighting of a harbour³ or any part of a harbour, either within the authority's area⁴ or on harbour land⁵.

1 As to the meaning of 'statutory harbour authority' see PARA 68 note 4.

2 For these purposes, 'harbour operations' has the same meaning as in the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 605): Merchant Shipping Act 1995 s 201(3).

3 As to the meaning of 'harbour' see PARA 49 note 5.

4 As to the meaning of 'area' see PARA 1068 note 12.

5 Merchant Shipping Act 1995 s 201(1), (2) (s 201(1) amended by the Merchant Shipping and Maritime Security Act 1997 ss 29(1), 31(3), Sch 6 para 8). For these purposes, 'harbour land' has the same meaning as in the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 605): Merchant Shipping Act 1995 s 201(3).

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(5) TRANSFERS BETWEEN LIGHTHOUSE AUTHORITIES

1081. Individual transfers of local lighthouses to harbour authorities.

A general lighthouse authority¹ may, at any time, with the consent of the Secretary of State², transfer to a statutory harbour authority³ any lighthouse⁴, buoy or beacon⁵ held by the general lighthouse authority which is situated in the area⁶ of that harbour authority or on land adjacent to that area or any part of it and which appears to the general lighthouse authority to be of benefit solely or mainly to ships⁷ within, or entering or leaving, that harbour authority's area⁸.

1 As to the meaning of 'general lighthouse authority' see PARA 1068.

2 As to the Secretary of State see PARA 38.

3 As to the meaning of 'statutory harbour authority' see PARA 68 note 4.

4 As to the meaning of 'lighthouse' see PARA 1068 note 1.

5 As to the meaning of 'buoys and beacons' see PARA 1068 note 2.

6 As to the meaning of 'area' see PARA 1068 note 12.

7 As to the meaning of 'ship' see PARA 229.

8 Merchant Shipping Act 1995 s 203 (amended by the Merchant Shipping and Maritime Security Act 1997 ss 29(1), 31(3), Sch 6 para 10).

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1082. Surrender of local lighthouses.

A local lighthouse authority¹ may, if it thinks fit, surrender or sell any lighthouse², buoy or beacon³ held by it to the general lighthouse authority⁴ within whose area⁵ it is situated⁶; and that general lighthouse authority may, with the consent of the Secretary of State⁷, accept or purchase it⁸. However, the Secretary of State must not give his consent for these purposes in any case where the local lighthouse authority concerned is a statutory harbour authority⁹ unless he considers that the maintenance of the lighthouse, buoy or beacon in question is in the interests of general navigation¹⁰.

1 As to the meaning of 'local lighthouse authority' see PARA 1068.

2 As to the meaning of 'lighthouse' see PARA 1068 note 1.

3 As to the meaning of 'buoys and beacons' see PARA 1068 note 2.

4 As to the meaning of 'general lighthouse authority' see PARA 1068.

5 As to the meaning of 'area' see PARA 1068 note 12.

6 Merchant Shipping Act 1995 s 204(1).

7 As to the Secretary of State see PARA 38.

8 Merchant Shipping Act 1995 s 204(1).

9 As to the meaning of 'statutory harbour authority' see PARA 68 note 4.

10 Merchant Shipping Act 1995 s 204(2) (amended by the Merchant Shipping and Maritime Security Act 1997 ss 29(1), 31(3), Sch 6 para 11).

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(6) DUES LEVIABLE BY LIGHTHOUSE AUTHORITIES

(i) General Light Dues

1083. Light dues leviable by general lighthouse authorities.

A general lighthouse authority¹ may demand, take and recover² dues which it may levy in respect of lighthouses³, buoys or beacons⁴ under its management⁵ ('general light dues')⁶, and it may for that purpose appoint persons to collect them⁷. General light dues may be levied only by reference to the voyages made by ships⁸ or by way of periodical payments⁹; and they are payable in respect of all ships whatever, except ships belonging to Her Majesty and ships exempted¹⁰ from payment¹¹.

The Secretary of State¹² may make regulations¹³ with respect to the amounts and the levying of general light dues, including the cases in which the dues are not to be levied, and the regulations may make different provision for different circumstances¹⁴. A copy of the regulations so in force in respect of general light dues must be kept at the principal office of the general lighthouse authority and the office of the appointed collector at every port¹⁵ where such dues are collected¹⁶; and the regulations must be open for inspection there during reasonable hours by any person without charge¹⁷.

Every person appointed by a general lighthouse authority to collect general light dues must collect all such dues payable at the port at which he is so appointed or, as the case may be, such of those dues as he is appointed to collect, whether they are collected on account of that authority or on account of one of the other general lighthouse authorities¹⁸.

Any person appointed by a general lighthouse authority to collect general light dues must pay over to that authority, or as that authority directs, the whole of the general light dues received by him¹⁹.

A general lighthouse authority receiving dues, whether itself or from a collector, must keep accounts of the dues and must cause the dues to be remitted to the Secretary of State, or as he directs, and in such manner as he directs²⁰.

1 As to the meaning of 'general lighthouse authority' see PARA 1068.

2 In accordance with the Merchant Shipping Act 1995 s 205: see s 205(1).

3 As to the meaning of 'lighthouse' see PARA 1068 note 1.

4 As to the meaning of 'buoys and beacons' see PARA 1068 note 2.

5 As to the general function of management of lighthouses see PARA 1074.

6 In the Merchant Shipping Act 1995 Pt VIII (ss 193-223) (lighthouses) (see PARAS 1068 et seq, 1084 et seq), 'general light dues' has the meaning given by s 205(1): see s 223(1).

7 Merchant Shipping Act 1995 s 205(1), (2).

8 As to the meaning of 'ship' see PARA 229.

- 9 Merchant Shipping Act 1995 s 205(3).
- 10 le in pursuance of the Merchant Shipping Act 1995 s 205(5) (see the text and notes 12-14): see s 205(4).
- 11 Merchant Shipping Act 1995 s 205(4).
- 12 As to the Secretary of State see PARA 38.
- 13 As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995, including his power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.
- 14 Merchant Shipping Act 1995 s 205(5). In exercise of the power so conferred, the Secretary of State has made the Merchant Shipping (Light Dues) Regulations 1997, SI 1997/562, which came into force on 1 April 1997 (see reg 1). Accordingly, the amounts of general light dues which may be levied under the Merchant Shipping Act 1995 s 205(2) (see the text and notes 1-7) are those set out in the scale of payments in the Merchant Shipping (Light Dues) Regulations 1997, SI 1997/562, reg 3(1), Sch 2 Pt II (Sch 2 Pt II amended by SI 2002/504; SI 2006/649): see the Merchant Shipping (Light Dues) Regulations 1997, SI 1997/562, reg 3(1). Light dues must be levied in accordance with the rules set out in Sch 2 Pt III (see reg 3(2)); but light dues may not be levied in the case of vessels of the descriptions listed in reg 3(3), Sch 2 Pt IV (Sch 2 Pt IV amended by SI 1998/495; SI 2006/649) (see the Merchant Shipping (Light Dues) Regulations 1997, SI 1997/562, reg 3(3)).
- 15 As to the meaning of 'port' see PARA 46 note 12.
- 16 Merchant Shipping Act 1995 s 205(6).
- 17 Merchant Shipping Act 1995 s 205(6).
- 18 Merchant Shipping Act 1995 s 205(7).
- 19 Merchant Shipping Act 1995 s 205(8).
- 20 Merchant Shipping Act 1995 s 205(9) (amended by the Merchant Shipping and Maritime Security Act 1997 ss 29(1), 31(3), Sch 6 para 12). As to the power of the Secretary of State to give directions under the Merchant Shipping Act 1995 see PARA 41.

UPDATE

1083 Light dues leviable by general lighthouse authorities

NOTE 14--SI 1997/562 amended: SI 2009/1371, SI 2010/629.

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1084. Information to determine light dues.

A general lighthouse authority¹ may, for the purpose of determining whether any and, if so, what general light dues² are payable in respect of any ship³, require any relevant authority⁴ or any person who is liable to pay general light dues in respect of the ship, to furnish to the general lighthouse authority such information in that authority's or person's possession or control relating to the arrival or departure of the ship at or from any port⁵ within its area⁶ as it may reasonably require for that purpose⁷.

A general lighthouse authority may require any relevant authority to furnish to it such information in the relevant authority's possession or control relating to the movements within the relevant authority's area of ships or ships of any class or description for the purpose of determining whether any and, if so, what general light dues are payable in respect of the ships⁸.

The powers so conferred on a general lighthouse authority⁹ are also available to the person appointed by it to collect dues at a port¹⁰.

It is the duty of a relevant authority or person of whom a requirement for information is so made¹¹ to furnish information as soon as is reasonably practicable¹².

1 As to the meaning of 'general lighthouse authority' see PARA 1068.

2 As to the meaning of 'general light dues' see PARA 1083.

3 As to the meaning of 'ship' see PARA 229.

4 For these purposes, 'relevant authority' means a harbour authority, the Commissioners for Revenue and Customs and a conservancy authority: Merchant Shipping Act 1995 s 206(5) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). As to the meaning of 'harbour authority' see PARA 68 note 4; and as to the meaning of 'conservancy authority' see PARA 71 note 2. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 900-933.

5 As to the meaning of 'port' see PARA 46 note 12.

6 As to the meaning of 'area' see PARA 1068 note 12.

7 Merchant Shipping Act 1995 s 206(1).

8 Merchant Shipping Act 1995 s 206(2).

9 Ie by the Merchant Shipping Act 1995 s 206(1), (2) (see the text and notes 1-8): see s 206(3).

10 Merchant Shipping Act 1995 s 206(3).

11 Ie under any of the Merchant Shipping Act 1995 s 206(1), (2) or (3) (see the text and notes 1-10): see s 206(4).

12 Merchant Shipping Act 1995 s 206(4).

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1085. Recovery of general light dues.

The following persons are liable to pay general light dues¹ in respect of any ship² in respect of which such dues are payable³, namely:

- 1249 (1) the owner or master⁴; or
- 1250 (2) such consignees or agents of the owner or master as have paid, or made themselves liable to pay, any other charge on account of the ship in the port⁵ of her arrival or discharge⁶.

General light dues so payable in respect of any ship may, in England and Wales⁷, be recovered summarily as a civil debt⁸.

Any consignee or agent, not being the owner or master of the ship, who is so made liable⁹ for the payment of general light dues in respect of any ship may, out of any money received by him on account of the ship or belonging to its owner, retain the amount of all general light dues paid by him, together with any reasonable expenses he may have incurred by reason of the payment of the dues or his liability to pay them¹⁰.

1 As to the meaning of 'general light dues' see PARA 1083.

2 As to the meaning of 'ship' see PARA 229.

3 Merchant Shipping Act 1995 s 207(1).

4 Merchant Shipping Act 1995 s 207(1)(a). As to the meaning of 'master' see PARA 424.

5 As to the meaning of 'port' see PARA 46 note 12.

6 Merchant Shipping Act 1995 s 207(1)(b).

7 As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

8 Merchant Shipping Act 1995 s 207(2).

9 Ie by the Merchant Shipping Act 1995 s 207: see s 207(4).

10 Merchant Shipping Act 1995 s 207(4).

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1086. Distress on ship for general light dues.

If the owner or master¹ of any ship² fails, on demand of the appointed collector, to pay the general light dues³ in respect of the ship, the collector may enter the ship and distrain the goods or any equipment or other thing belonging to, or on board, the ship and detain that distress until those dues are paid⁴.

If payment of the dues so demanded is not made within the period of five days following the distress, the collector may, at any time during the continuance of the non-payment, cause the distress to be independently appraised and thereupon sold by public auction⁵.

The collector must apply the proceeds of the sale in payment of: (1) the general light dues due⁶; and (2) all reasonable expenses incurred by him⁷; and he must pay the surplus, if any, on demand to the owner or master of the ship⁸.

The remedy so conferred⁹ is in addition to any other remedy available to the collector or the general lighthouse authority¹⁰ by which he was appointed¹¹.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'ship' see PARA 229.

3 As to the meaning of 'general light dues' see PARA 1083.

4 Merchant Shipping Act 1995 s 208(1).

5 Merchant Shipping Act 1995 s 208(2).

6 Merchant Shipping Act 1995 s 208(3)(a).

7 Merchant Shipping Act 1995 s 208(3)(b). Head (2) in the text refers to all reasonable expenses incurred by the collector under s 208: see s 208(3)(b).

8 Merchant Shipping Act 1995 s 208(3).

9 ie by the Merchant Shipping Act 1995 s 208: see s 208(4).

10 As to the meaning of 'general lighthouse authority' see PARA 1068.

11 Merchant Shipping Act 1995 s 208(4).

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1087. Receipt for general light dues and its production.

A receipt for general light dues¹ must be given to the person paying them by the authority or person receiving them from him².

A ship³ may be detained at any port⁴ until the receipt for any general light dues due in respect of the ship is produced to the proper officer of Revenue and Customs⁵ or the person appointed to collect general light dues at the port⁶.

1 As to the meaning of 'general light dues' see PARA 1083.

2 Merchant Shipping Act 1995 s 209(1).

3 As to the meaning of 'ship' see PARA 229.

4 As to the meaning of 'port' see PARA 46 note 12.

5 As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

6 Merchant Shipping Act 1995 s 209(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). As to enforcing the detention of ships generally see PARA 1253.

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(ii) Local Light Dues

1088. Light dues leviable by local lighthouse authorities.

A local lighthouse authority¹, which is not a statutory harbour authority², may demand, take and recover in respect of every ship³ which enters or leaves the port⁴, harbour⁵ or estuary in which is situated any lighthouse⁶, buoy or beacon⁷ over which it has authority, and which passes the lighthouse, buoy or beacon and derives benefit from it, such charges as the authority thinks fit⁸.

The same persons are liable to pay charges leviable by a local lighthouse authority (which is not a statutory harbour authority) in respect of lighthouses, buoys or beacons over which it has authority ('local light dues')⁹ as are liable¹⁰ to pay general light dues¹¹; and local light dues may be recovered in the same manner as general light dues may¹² be recovered¹³.

A list showing the local light dues leviable by a local lighthouse authority must be kept at the authority's office and must be open there during reasonable hours for inspection by any person without charge¹⁴; and copies of the list must be kept for sale there at such reasonable price, if any, as the authority determines¹⁵. A copy of the list so kept by a local lighthouse authority must be supplied by it to the Secretary of State without charge¹⁶.

No local light due may be levied by a local lighthouse authority if, at the time at which it is leviable, the authority is in default in compliance with its obligation¹⁷ to keep a list of dues or the light due is not shown in the list kept there at that time¹⁸.

All local light dues must be applied by the authority by which they are levied for the purpose of the construction, placing, maintenance and improvement of the lighthouses, buoys or beacons in respect of which the dues are levied, and for no other purpose¹⁹.

The local lighthouse authority to which any local light dues are paid must keep a separate account of the receipt and expenditure of those dues²⁰.

1 As to the meaning of 'local lighthouse authority' see PARA 1068.

2 As to the meaning of 'statutory harbour authority' see PARA 68 note 4.

3 As to the meaning of 'ship' see PARA 229.

4 As to the meaning of 'port' see PARA 46 note 12.

5 As to the meaning of 'harbour' see PARA 49 note 5.

6 As to the meaning of 'lighthouse' see PARA 1068 note 1.

7 As to the meaning of 'buoys and beacons' see PARA 1068 note 2.

8 Merchant Shipping Act 1995 s 210(2) (amended by the Merchant Shipping and Maritime Security Act 1997 ss 29(1), 31(3), Sch 6 para 13).

9 The Harbours Act 1964 s 31 (rights of objection to ship, passenger and goods dues) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 671) applies in relation to local light dues subject, however, to the modifications specified in the Merchant Shipping Act 1995 s 210(8), Sch 10: s 210(8).

10 Ie under the Merchant Shipping Act 1995 s 207 (see PARA 1085): see s 210(3).

11 Merchant Shipping Act 1995 s 210(1), (3) (s 210(1) amended by the Merchant Shipping and Maritime Security Act 1997 s 31(3), Sch 6 para 13). As to the meaning of 'general light dues' see PARA 1083.

12 le under the Merchant Shipping Act 1995 s 207 (see PARA 1085) and s 208 (see PARA 1086): see s 210(4).

13 Merchant Shipping Act 1995 s 210(4).

14 Merchant Shipping Act 1995 s 210(5).

15 Merchant Shipping Act 1995 s 210(5).

16 Merchant Shipping Act 1995 s 210(7). As to the Secretary of State see PARA 38.

17 le under the Merchant Shipping Act 1995 s 210(5) (see the text and notes 14-15): see s 210(6).

18 Merchant Shipping Act 1995 s 210(6).

19 Merchant Shipping Act 1995 s 210(9).

20 Merchant Shipping Act 1995 s 210(10).

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(7) FINANCE AND ADMINISTRATION

1089. General Lighthouse Fund; expenses and receipts.

The General Lighthouse Fund is administered by the Secretary of State¹. The following must be paid out of that Fund:

- 1251 (1) any expenses incurred by general lighthouse authorities² in connection with the discharge of their functions under the Merchant Shipping Act 1995 provisions which relate to lighthouses³ and, in the case of the Commissioners of Irish Lights⁴ as respects their functions in the Republic of Ireland, under the corresponding Part of the Merchant Shipping Act 1894⁵, but subject to the statutory provisions⁶ relating to estimates and accounts of expenses⁷;
- 1252 (2) any expenses, whether of a capital nature or not, incurred by the Secretary of State in pursuance of any international agreement relating to the provision of an electronic position-fixing system intended as an aid to the navigation of ships or incurred by him preliminary to his entering into such an agreement⁸;
- 1253 (3) such sums as the Secretary of State may determine as sums appearing to him to represent the amount or estimated amount of any expenses incurred or likely to be incurred by him in connection with the administration of the Fund⁹;
- 1254 (4) any expenses incurred by the Secretary of State in maintaining the Sombbrero lighthouse in the Leeward Islands¹⁰;
- 1255 (5) any other sums made payable out of the Fund by any other provision of Part VIII¹¹ or Part IX¹² of the Merchant Shipping Act 1995¹³.

The following must be paid into that Fund:

- 1256 (a) all general light dues¹⁴ and other sums received by or accruing to any of the general lighthouse authorities by virtue of, or in connection with the discharge of their functions under, Part VIII of the Merchant Shipping Act 1995¹⁵ and, in the case of the Commissioners of Irish Lights as respects their functions in the Republic of Ireland, under the corresponding Part of the Merchant Shipping Act 1894¹⁶;
- 1257 (b) any sums received by the Secretary of State in pursuance of any such agreement as is mentioned in head (2) above in respect of expenses incurred by him in pursuance of the agreement or in respect of expenses incurred by any of the general lighthouse authorities which are payable¹⁷ out of the Fund¹⁸;
- 1258 (c) any other sums made payable into the Fund by any other provision of Part VIII¹⁹ or Part IX²⁰ of the Merchant Shipping Act 1995²¹.

The accounts of the Fund for each year must be examined by the Comptroller and Auditor General²² who must send a copy of the accounts certified by him to the Secretary of State²³; and the Secretary of State must lay copies of the accounts before each House of Parliament²⁴.

¹ See the Merchant Shipping Act 1995 s 211(1). As to the Secretary of State see PARA 38. The General Lighthouse Fund was established under the Merchant Shipping (Mercantile Marine Fund) Act 1898 on the abolition of the Mercantile Marine Fund: see s 1 (repealed). There must continue to be paid out of the General

Lighthouse Fund under the Merchant Shipping Act 1995 s 211 any expenditure incurred by the government of the United Kingdom in pursuance of the arrangement made with the government of Sri Lanka on 27 February 1976 for the transfer of certain lighthouses off the coast of that country: s 314(3), Sch 14 para 9(5).

2 As to the meaning of 'general lighthouse authority' see PARA 1068.

3 Ie the Merchant Shipping Act 1995 Pt VIII (ss 193-223) (see PARAS 1068 et seq, 1090 et seq): see s 211(2)(a). As to the meaning of 'lighthouse' see PARA 1068 note 1.

4 As to the meaning of 'Commissioners of Irish Lights' see PARA 1071.

5 Ie the Merchant Shipping Act 1894 Pt XI (ss 634-669) (repealed): see s 211(2)(a).

6 Ie the Merchant Shipping Act 1995 s 213 (see PARA 1091): see s 211(2)(a).

7 Merchant Shipping Act 1995 s 211(2)(a).

8 Merchant Shipping Act 1995 s 211(2)(b).

9 Merchant Shipping Act 1995 s 211(2)(c).

10 Merchant Shipping Act 1995 s 211(2)(d).

11 Ie the Merchant Shipping Act 1995 Pt VIII (see PARAS 1068 et seq, 1090 et seq): see s 211(2)(e).

12 Ie the Merchant Shipping Act 1995 Pt IX (ss 224-255) (salvage and wreck) (see PARA 879 et seq): see s 211(2)(e).

13 Merchant Shipping Act 1995 s 211(2)(e).

14 As to the meaning of 'general light dues' see PARA 1083.

15 Ie the Merchant Shipping Act 1995 Pt VIII (see PARAS 1068 et seq, 1090 et seq): see s 211(3)(a).

16 Merchant Shipping Act 1995 s 211(3)(a). As to the corresponding Part of the Merchant Shipping Act 1894 mentioned in the text see note 5.

17 Ie by virtue of the Merchant Shipping Act 1995 s 211(2) (see the text and notes 2-13): see s 211(3)(b).

18 Merchant Shipping Act 1995 s 211(3)(b).

19 Ie the Merchant Shipping Act 1995 Pt VIII (see PARAS 1068 et seq, 1090 et seq): see s 211(3)(c).

20 Ie the Merchant Shipping Act 1995 Pt IX (see PARA 879 et seq): see s 211(3)(c).

21 Merchant Shipping Act 1995 s 211(3)(c).

22 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 724 et seq.

23 Merchant Shipping Act 1995 s 211(4).

24 Merchant Shipping Act 1995 s 211(5).

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1090. Establishments of general lighthouse authorities.

The Secretary of State¹ may determine²:

- 1259 (1) the establishments to be maintained by each of the general lighthouse authorities³ on account of the services of lighthouses⁴, buoys and beacons⁵;
- 1260 (2) the annual or other sums to be paid out of the General Lighthouse Fund⁶ in respect of those establishments or to members of the general lighthouse authority for England and Wales⁷.

If it appears that any part of the establishments of the general lighthouse authorities is maintained for other purposes as well as for the purposes of their duties as general lighthouse authorities, the Secretary of State may determine the portion of the expenses of those establishments to be paid out of the General Lighthouse Fund⁸.

An increase in any establishment or part of an establishment determined in this way⁹ may not be made without the consent of the Secretary of State¹⁰.

1 As to the Secretary of State see PARA 38.

2 Merchant Shipping Act 1995 s 212(1).

3 As to the meaning of 'general lighthouse authority' see PARA 1068.

4 As to the meaning of 'lighthouse' see PARA 1068 note 1.

5 Merchant Shipping Act 1995 s 212(1)(a). As to the meaning of 'buoys and beacons' see PARA 1068 note 2.

6 As to the General Lighthouse Fund see PARA 1089.

7 Merchant Shipping Act 1995 s 212(1)(b).

8 Merchant Shipping Act 1995 s 212(2).

9 le determined under Merchant Shipping Act 1995 s 212: see s 212(3).

10 Merchant Shipping Act 1995 s 212(3).

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1091. Estimates or accounts of expenses to the Secretary of State.

An expense of a general lighthouse authority¹ in respect of the services of lighthouses², buoys and beacons³ must not be paid out of the General Lighthouse Fund⁴, or allowed in account, unless it has been allowed as part of the establishment expenses⁵ or an estimate or account of it has been approved by the Secretary of State⁶.

For the purpose of approval by the Secretary of State, each of the general lighthouse authorities must submit to him an estimate of all expenses to be incurred by them in respect of lighthouses, buoys and beacons, other than expenses allowed⁷ on account of their establishments⁸; but, in a case where it is necessary for a general lighthouse authority, in providing for any sudden emergency, to incur any such expense without waiting for the approval of the Secretary of State, the authority must as soon as possible submit to him a full account of the expense incurred⁹.

The Secretary of State must consider any estimates and accounts so submitted to him¹⁰ and may approve them either with or without modification¹¹.

1 As to the meaning of 'general lighthouse authority' see PARA 1068.

2 As to the meaning of 'lighthouse' see PARA 1068 note 1.

3 As to the meaning of 'buoys and beacons' see PARA 1068 note 2.

4 As to the General Lighthouse Fund see PARA 1089.

5 Ie under the Merchant Shipping Act 1995 s 212 (see PARA 1090): see s 213(1).

6 Merchant Shipping Act 1995 s 213(1). As to the Secretary of State see PARA 38.

7 Ie under the Merchant Shipping Act 1995 s 212 (see PARA 1090): see s 213(2).

8 Merchant Shipping Act 1995 s 213(2).

9 Merchant Shipping Act 1995 s 213(3).

10 Ie under the Merchant Shipping Act 1995 s 213: see s 213(4).

11 Merchant Shipping Act 1995 s 213(4).

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1092. Pension rights of certain employees.

There are payable to or in respect of persons whose salaries are paid out of the General Lighthouse Fund¹ such pensions, allowances and gratuities as may be determined in accordance with²:

- 1261 (1) in the case of such of those persons as are employed by the Secretary of State³, arrangements made by him⁴; and
- 1262 (2) in the case of other such persons, arrangements made by a general lighthouse authority⁵ and approved by the Secretary of State⁶;

and those benefits are to be charged on and payable out of that Fund⁷.

1 As to the General Lighthouse Fund see PARA 1089.

2 Merchant Shipping Act 1995 s 214.

3 As to the Secretary of State see PARA 38.

4 Merchant Shipping Act 1995 s 214(a).

5 As to the meaning of 'general lighthouse authority' see PARA 1068.

6 Merchant Shipping Act 1995 s 214(b).

7 Merchant Shipping Act 1995 s 214. As to the distribution on the death of a person to whom s 214 applies of any sum not exceeding £5,000 without probate see the Superannuation (Various Services) Act 1938 s 2 (amended by SI 1984/539), the Superannuation (Various Services) Act 1938 Schedule Pt I (amended by the Superannuation Act 1972 s 29(1), Sch 6 para 17; and the Merchant Shipping Act 1995 s 314(2), Sch 13 para 17).

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1093. Borrowing powers of general lighthouse authorities; limit on borrowing.

A general lighthouse authority¹ may, with the consent of the Secretary of State² and the Treasury³, borrow money for the purpose of defraying any expenses incurred or to be incurred by the authority in connection with the discharge of its functions under Part VIII⁴ or IX⁵ of the Merchant Shipping Act 1995⁶.

A general lighthouse authority may, in connection with any such advance⁷, mortgage any land or other property belonging to it⁸.

Any sums payable by a general lighthouse authority under the terms of such an advance⁹ by way of principal, interest or otherwise must be paid out of the General Lighthouse Fund¹⁰.

The aggregate amount outstanding in respect of the principal of any sums so borrowed¹¹ must not at any time exceed £100 million¹²; but the Secretary of State may, by order, with the approval of the Treasury, increase or further increase that limit, but not by more than £33 million at a time¹³.

1 As to the meaning of 'general lighthouse authority' see PARA 1068.

2 As to the Secretary of State see PARA 38.

3 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

4 Ie the Merchant Shipping Act 1995 Pt VIII (ss 193-223) (lighthouses) (see PARAS 1068 et seq, 1094 et seq): see s 215(1).

5 Ie the Merchant Shipping Act 1995 Pt IX (ss 224-255) (salvage and wreck) (see PARA 879 et seq): see s 215(1).

6 Merchant Shipping Act 1995 s 215(1). As to guarantees by the Secretary of State see PARA 1094.

7 Ie any advance to it under the Merchant Shipping Act 1995 s 215: see s 215(2).

8 Merchant Shipping Act 1995 s 215(2).

9 Ie an advance under the Merchant Shipping Act 1995 s 215: see s 215(3).

10 Merchant Shipping Act 1995 s 215(3). As to the General Lighthouse Fund see PARA 1089.

11 Ie borrowed under the Merchant Shipping Act 1995 s 215 (see the text and notes 1-10): see s 216(1).

12 Merchant Shipping Act 1995 s 216(1).

13 Merchant Shipping Act 1995 s 216(2). An order may not be made under s 216(2) unless a draft of the order has been laid before and approved by a resolution of the House of Commons: s 216(3). At the date at which this volume states the law, no such order had been made and none has effect as if so made. As to the making of orders by the Secretary of State under the Merchant Shipping Act 1995 generally see PARA 41.

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1094. Guarantees by the Secretary of State of sums borrowed by general lighthouse authority.

The Secretary of State¹ with the consent of the Treasury² may guarantee, in such manner and on such conditions as he thinks fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums borrowed³ by a general lighthouse authority⁴.

Immediately after such a guarantee is given, the Secretary of State must lay a statement of the guarantee before each House of Parliament; and, where any sum is issued for fulfilling a guarantee so given, the Secretary of State must, as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest thereon is finally discharged, lay before each House of Parliament a statement relating to that sum⁵.

Any sums required by the Secretary of State for fulfilling any such guarantee must be paid out of money provided by Parliament⁶.

If any sums are issued in fulfilment of any guarantee so given, there must be made to the Secretary of State out of the General Lighthouse Fund⁷, at such times and in such manner as the Secretary of State may determine with the consent of the Treasury, payments of such amounts as the Secretary of State may so determine in or towards repayment of the sums so issued, and payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Secretary of State may so determine⁸. The Secretary of State with the consent of the Treasury may vary or revoke any determination so made by him⁹. Any sums so received by the Secretary of State must be paid into the Consolidated Fund¹⁰.

1 As to the Secretary of State see PARA 38.

2 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

3 le under the Merchant Shipping Act 1995 s 215 (see PARA 1093); see s 217(1).

4 Merchant Shipping Act 1995 s 217(1). As to the meaning of 'general lighthouse authority' see PARA 1068.

5 Merchant Shipping Act 1995 s 217(2).

6 Merchant Shipping Act 1995 s 217(3).

7 As to the General Lighthouse Fund see PARA 1089.

8 Merchant Shipping Act 1995 s 217(4).

9 Merchant Shipping Act 1995 s 217(5).

10 Merchant Shipping Act 1995 s 217(6). As to payments to be made into the Consolidated Fund under the Merchant Shipping Act 1995 see PARA 63. As to the Consolidated Fund generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

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1095. Accounts of general lighthouse authorities.

Each of the general lighthouse authorities¹ must account to the Secretary of State² for the general light dues³ and other sums received by or accruing to it by virtue of, or in connection with, the discharge of its functions under Parts VIII⁴ or IX⁵ of the Merchant Shipping Act 1995 and for its expenditure in respect of expenses paid out of the General Lighthouse Fund⁶ in such form, at such times, and with such details, explanations and vouchers as the Secretary of State requires⁷.

Each of the general lighthouse authorities must, when required by the Secretary of State, permit all accounting records kept by or under its respective direction to be inspected and examined by such persons as the Secretary of State appoints for the purpose⁸.

1 As to the meaning of 'general lighthouse authority' see PARA 1068.

2 As to the Secretary of State see PARA 38.

3 As to the meaning of 'general light dues' see PARA 1083.

4 Ie the Merchant Shipping Act 1995 Pt VIII (ss 193-223) (lighthouses) (see PARAS 1068 et seq, 1096 et seq): see s 218(1).

5 Ie the Merchant Shipping Act 1995 Pt IX (ss 224-255) (salvage and wreck) (see PARA 879 et seq): see s 218(1).

6 As to the General Lighthouse Fund see PARA 1089.

7 Merchant Shipping Act 1995 s 218(1).

8 Merchant Shipping Act 1995 s 218(2).

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(8) EXEMPTIONS FROM TAXES, RATES ETC AND HARBOUR DUES

1096. Exemptions from taxes, duties, rates etc.

The following, that is to say:

- 1263 (1) all lighthouses¹, buoys and beacons²;
- 1264 (2) all general light dues³ and other rates, fees or payments accruing to or forming part of the General Lighthouse Fund⁴; and
- 1265 (3) all premises or property belonging to or occupied by any of the general lighthouse authorities⁵,

which are used or applied for the purposes of any of the services for which those dues, rates, fees and payments are received are exempt from all public or local taxes, duties or rates⁶.

All instruments used by or under the direction of any general lighthouse authority in carrying on those services are exempt from stamp duty⁷; and, for the purposes of stamp duty land tax, any land transaction entered into:

- 1266 (a) by or under the direction of any general lighthouse authority for the purposes of carrying on those services⁸; or
- 1267 (b) by or under the direction of the Secretary of State⁹ for the purposes of carrying into effect the Merchant Shipping Act 1995 provisions¹⁰ relating to lighthouses¹¹,

is exempt from charge¹².

All instruments used by or under the direction of the Secretary of State as mentioned in head (b) above are exempt from stamp duty¹³; and all instruments which are required by any of the Merchant Shipping Act 1995 provisions¹⁴ relating to lighthouses to be in a form approved by the Secretary of State, if made in that form, are exempt from stamp duty¹⁵.

1 As to the meaning of 'lighthouse' see PARA 1068 note 1.

2 Merchant Shipping Act 1995 s 221(1)(a). As to the meaning of 'buoys and beacons' see PARA 1068 note 2.

3 As to the meaning of 'general light dues' see PARA 1083.

4 Merchant Shipping Act 1995 s 221(1)(b). As to the General Lighthouse Fund see PARA 1089.

5 Merchant Shipping Act 1995 s 221(1)(c).

6 Merchant Shipping Act 1995 s 221(1). A hereditament is exempt from local non-domestic rating to the extent that it belongs to or is occupied by the Trinity House and consists of any of the following:

12 (1) a lighthouse (Local Government Finance Act 1988 s 51, Sch 5 para 12(1)(a));

13 (2) a buoy (Sch 5 para 12(1)(b));

14 (3) a beacon (Sch 5 para 12(1)(c));

15 (4) property within the same curtilage as, and occupied for the purposes of, a lighthouse (Sch 5 para 12(1)(d)).

No other hereditament, or part of a hereditament, belonging to or occupied by the Trinity House is exempt, notwithstanding anything in the Merchant Shipping Act 1995 s 221(1): Local Government Finance Act 1988 Sch 5 para 12(2) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 83). As to the Trinity House see PARA 1069. See also **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 55. As to the meaning of 'hereditament' see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 33 et seq; and as to the meaning of 'exempt' for these purposes see the Local Government Finance Act 1988 Sch 5 para 21(1), (2); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 37.

7 Merchant Shipping Act 1995 s 221(2). Stamp duty is not chargeable on any proposal under the Merchant Shipping Act 1995 s 202, Sch 9 (repealed) (general transfer of lighthouses to harbour authorities): see s 221(3).

8 Merchant Shipping Act 1995 s 221(2A) (added by SI 2003/2867).

9 As to the Secretary of State see PARA 38; and as to the Secretary of State's power to give directions under the Merchant Shipping Act 1995 see PARA 41.

10 Ie the Merchant Shipping Act 1995 Pt VIII (ss 193-223) (lighthouses) (see PARAS 1068 et seq, 1097): see s 221(4).

11 Merchant Shipping Act 1995 s 221(4A) (s 221(4A)-(4C) added by SI 2003/2867).

12 See the Merchant Shipping Act 1995 s 221(2A) (as added: see note 8), s 221(4A) (as added: see note 11). Relief under s 221(2A) or under s 221(4A) must be claimed in a land transaction return or an amendment of such a return: s 221(4B) (as added: see note 11). For these purposes, 'land transaction' has the meaning given in the Finance Act 2003 s 43(1) (see **STAMP DUTIES AND STAMP DUTY RESERVE TAX**); and 'land transaction return' has the meaning given by s 76(1) (see **STAMP DUTIES AND STAMP DUTY RESERVE TAX**): see the Merchant Shipping Act 1995 s 221(4C) (as added: see note 11).

13 Merchant Shipping Act 1995 s 221(4).

14 Ie the Merchant Shipping Act 1995 Pt VIII (see PARAS 1068 et seq, 1097): see s 221(5).

15 Merchant Shipping Act 1995 s 221(5).

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1097. Harbour dues.

All ships¹ belonging to or used by any of the general lighthouse authorities² or the Secretary of State³ are entitled to enter, resort to and use any harbours⁴, ports⁵, docks or piers in the United Kingdom⁶ without payment of tolls, dues or rates of any kind⁷.

1 As to the meaning of 'ship' see PARA 229.

2 As to the meaning of 'general lighthouse authority' see PARA 1068.

3 As to the Secretary of State see PARA 38.

4 As to the meaning of 'harbour' see PARA 49 note 5.

5 As to the meaning of 'port' see PARA 46 note 12.

6 As to the meaning of 'United Kingdom' see PARA 17 note 3.

7 Merchant Shipping Act 1995 s 222.

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(9) WRECKS

1098. Powers of lighthouse authorities in relation to wrecks.

Where:

- 1268 (1) any vessel¹ is sunk, stranded or abandoned in any fairway or on the seashore or on or near any rock, shoal or bank in the United Kingdom² or any of the adjacent seas or islands³; and
- 1269 (2) there is no harbour authority⁴ or conservancy authority⁵ having power to raise, remove or destroy the vessel⁶,

the general lighthouse authority⁷ for the place in or near which the vessel is situated has, if in the authority's opinion the vessel is, or is likely to become, an obstruction or danger to navigation or to lifeboats engaged in lifeboat service, the same powers in relation thereto as those conferred⁸ on harbour and conservancy authorities in relation to wrecks⁹.

Where a general lighthouse authority has incurred expenses in its exercise of these powers¹⁰ in relation to any vessel, then¹¹:

- 1270 (a) if the proceeds of any sale made¹² in connection with the exercise of those powers in relation to the vessel are insufficient to reimburse the authority for the full amount of those expenses, the authority may recover the amount of the deficiency from the relevant person¹³; or
- 1271 (b) if there is no such sale, the authority may recover the full amount of those expenses from the relevant person¹⁴.

Any expenses so incurred which are not recovered by the authority either out of the proceeds of any such sale or in accordance with head (a) or head (b) above must be paid out of the General Lighthouse Fund¹⁵.

If any question arises between a harbour authority or conservancy authority and a general lighthouse authority as to their respective powers¹⁶ in relation to any place in or near an approach to a harbour or tidal water¹⁷, that question must, on the application of either authority, be referred to the Secretary of State¹⁸ for his decision¹⁹; and any such decision of the Secretary of State is final²⁰.

1 As to the meaning of 'vessel' see PARA 885 note 5.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping Act 1995 s 253(1)(a).

4 As to the meaning of 'harbour authority' see PARA 68 note 4.

5 As to the meaning of 'conservancy authority' see PARA 71 note 2.

6 Merchant Shipping Act 1995 s 253(1)(b).

7 As to the meaning of 'general lighthouse authority' see PARA 1068.

- 8 le conferred by the Merchant Shipping Act 1995 s 252 (see PARA 1008): see s 253(1).
- 9 Merchant Shipping Act 1995 s 253(1).
- 10 le the exercise of its powers under the Merchant Shipping Act 1995 s 253: see s 253(2).
- 11 Merchant Shipping Act 1995 s 253(2).
- 12 le under the Merchant Shipping Act 1995 s 252 (see PARA 1008): see s 253(2)(a).
- 13 Merchant Shipping Act 1995 s 253(2)(a). For these purposes, 'relevant person', in relation to any vessel, means the owner of the vessel at the time of the sinking, stranding or abandonment of the vessel: s 253(4).
- 14 Merchant Shipping Act 1995 s 253(2)(b).
- 15 Merchant Shipping Act 1995 s 253(3). However, the provisions of s 213 (see PARA 1091) apply to those expenses as if they were expenses of the authority falling within s 213(1) other than establishment expenses: see s 253(3). As to the General Lighthouse Fund see PARA 1089.
- 16 le under the Merchant Shipping Act 1995 s 252 (see PARA 1008) or under s 253: see s 254(1).
- 17 As to the meaning of 'tidal water' see PARA 987 note 6.
- 18 As to the Secretary of State see PARA 38.
- 19 Merchant Shipping Act 1995 s 254(1).
- 20 Merchant Shipping Act 1995 s 254(2). As to the respective powers of harbour authorities, conservancy authorities and a general lighthouse authority in relation to wrecks see also PARAS 1008-1009.

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14. OFFENCES AND LEGAL PROCEEDINGS

(1) PROSECUTION OF OFFENCES GENERALLY

(i) In general

1099. Meanings of the 'prescribed sum', the 'standard scale' and the 'statutory maximum'.

The 'prescribed sum' means £5,000 or such sum as is for the time being substituted by an order¹ in force under the Magistrates' Courts Act 1980².

In any Act, unless the contrary intention appears, with reference to a fine or penalty, on summary conviction, for an offence, 'statutory maximum' means the prescribed sum³ within the meaning of the Magistrates' Courts Act 1980⁴.

In any Act, unless the contrary intention appears, with reference to a fine or penalty for an offence triable only summarily, the 'standard scale' has the meaning given⁵ by the Criminal Justice Act 1982⁶, which provides that there is to be a standard scale of fines for summary offences, known as the 'standard scale'⁷. Where any enactment⁸ provides that a person convicted of a summary offence is to be liable on conviction to a fine or a maximum fine by reference to a specified level on the standard scale, it is to be construed as referring to the standard scale for which the Criminal Justice Act 1982⁹ provides, as that standard scale has effect from time to time¹⁰.

1 Ie an order under the Magistrates' Courts Act 1980 s 143(1): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)(c)). If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum for the time being specified in the definition of the 'prescribed sum' in the Magistrates' Courts Act 1980 s 32(9) such other sum as appears to him justified by the change: see s 143(1), (2)(b) (s 143(1) substituted by the Criminal Justice Act 1982 s 48(1)).

2 See the Magistrates' Courts Act 1980 s 32(9) (as amended: see note 1). See further **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

3 Ie within the meaning of the Magistrates' Courts Act 1980 s 32 (as to which generally see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 6): see the Interpretation Act 1978 s 5, Sch 1 (definition as added: see note 4). The present maximum is £5,000: see the Magistrates' Courts Act 1980 s 32(9); and notes 1-2.

4 See the Interpretation Act 1978 Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(b)). See further **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

5 Ie given by the Criminal Justice Act 1982 s 37 (see the text and notes 7-10): see the Interpretation Act 1978 Sch 1 (definition as added: see note 6).

6 See the Interpretation Act 1978 Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(a)). See further **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

7 See the Criminal Justice Act 1982 s 37(1). The standard scale is: level 1: £200; level 2: £500; level 3: £1,000; level 4: £2,500; level 5: £5,000: see s 37(2) (substituted by the Criminal Justice Act 1991 ss 17(1), 101(1), Sch 12 para 6).

8 Ie whether contained in an Act passed before or after the Criminal Justice Act 1982: see s 37(3).

9 le the Criminal Justice Act 1982 s 37: see s 37(3).

10 le by virtue of the Criminal Justice Act 1982 s 37 or of an order under the Magistrates' Courts Act 1980 s 143 (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141): see the Criminal Justice Act 1982 s 37(3). As to the application of this provision to Guernsey see the Criminal Justice Act 1982 (Guernsey) Order 1992, SI 1992/3202.

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1100. Time limit for summary offences.

No person may be convicted of an offence under the Merchant Shipping Act 1995 in summary proceedings unless¹:

- 1272 (1) the proceedings were commenced within six months beginning with the date on which the offence was committed²; or
- 1273 (2) in a case where the accused happens during that period to be out of the United Kingdom³, the proceedings were commenced within two months after he first happens to arrive within the United Kingdom and before the expiration of three years beginning with the date on which the offence was committed⁴.

However, nothing in this provision⁵ applies in relation to any indictable offence⁶; nor does that provision⁷ prevent a conviction for an offence in summary proceedings begun before the expiration of three years beginning with the date on which the offence was committed⁸, and before:

- 1274 (a) the expiration of the period of six months beginning with the day when evidence which the Secretary of State⁹ considers is sufficient to justify a prosecution for the offence came to his knowledge¹⁰; or
- 1275 (b) the expiration of two months beginning with the day when the accused was first present in the United Kingdom after the expiration of the period mentioned in head (a) above if throughout that period the accused was absent from the United Kingdom¹¹.

For these purposes: (i) a certificate of the Secretary of State stating that evidence came to his knowledge on a particular day is conclusive evidence of that fact¹²; and (ii) a document purporting to be a certificate of the Secretary of State and to be signed on his behalf is presumed to be such a certificate unless the contrary is proved¹³.

1 Merchant Shipping Act 1995 s 274(1). Section 274(1) is subject to s 274(2), (3) (see the text and notes 5-11): see s 274(1).

2 Merchant Shipping Act 1995 s 274(1)(a). See note 1.

3 As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping Act 1995 s 274(1)(b). See note 1.

5 Ie nothing in the Merchant Shipping Act 1995 s 274(1) (see the text and notes 1-4): see s 274(2).

6 Merchant Shipping Act 1995 s 274(2). As to the meaning of 'indictable offence' see **STATUTES** vol 44(1) (Reissue) PARA 1386.

7 Ie the Merchant Shipping Act 1995 s 274(1) (see the text and notes 1-4): see s 274(3).

8 Merchant Shipping Act 1995 s 274(3).

9 As to the Secretary of State see PARA 38.

- 10 Merchant Shipping Act 1995 s 274(3)(a).
- 11 Merchant Shipping Act 1995 s 274(3)(b).
- 12 Merchant Shipping Act 1995 s 274(4)(a).
- 13 Merchant Shipping Act 1995 s 274(4)(b).

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1101. Time limit for summary orders.

No order for the payment of money may be made under the Merchant Shipping Act 1995 in proceedings before a magistrates' court unless¹:

1276 (1) the proceedings were commenced within six months beginning with the date on which the matter of complaint arose²; or

1277 (2) in a case where both or either of the parties to the proceedings happen during that period to be out of the United Kingdom³, the proceedings were commenced within six months after they both first happen to arrive, or to be at one time, within the United Kingdom⁴.

1 Merchant Shipping Act 1995 s 275.

2 Merchant Shipping Act 1995 s 275(a).

3 As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping Act 1995 s 275(b).

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1102. Offences by officers of bodies corporate.

Where a body corporate is guilty of an offence under the Merchant Shipping Act 1995 or any instrument made under it, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such a capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly¹.

Where the affairs of a body corporate are managed by its members, this provision² applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate³.

1 Merchant Shipping Act 1995 s 277(1).

2 I.e. the Merchant Shipping Act 1995 s 277(1) (see the text and note 1): see s 277(2).

3 Merchant Shipping Act 1995 s 277(2).

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(ii) Jurisdiction

1103. Jurisdiction in relation to offences.

For the purpose of conferring jurisdiction, any offence under the Merchant Shipping Act 1995 is deemed to have been committed in any place in the United Kingdom¹ where the offender may for the time being be².

For the same purpose, any matter of complaint under the Merchant Shipping Act 1995 is deemed to have arisen in any place in the United Kingdom where the person complained against may for the time being be³.

The jurisdiction so conferred⁴ is in addition to and not in derogation of any jurisdiction or power of a court under any other enactment⁵.

1 As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 Merchant Shipping Act 1995 s 279(1).

3 Merchant Shipping Act 1995 s 279(2).

4 ie under the Merchant Shipping Act 1995 s 279(1), (2) (see the text and notes 1-3): see s 279(3).

5 Merchant Shipping Act 1995 s 279(3).

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1104. Jurisdiction over ships lying off coasts.

Where the area within which a court in any part of the United Kingdom¹ has jurisdiction is situated on the coast of any sea or abuts on or projects into any bay, channel, lake, river or other navigable water, the court has jurisdiction as respects offences under the Merchant Shipping Act 1995 over any vessel being on, or lying or passing off, that coast or being in or near that bay, channel, lake, river or navigable water and over all persons on board that vessel or for the time being belonging to it².

The jurisdiction so conferred³ is in addition to and not in derogation of any jurisdiction or power of a court under the Magistrates' Courts Act 1980⁴.

1 As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 Merchant Shipping Act 1995 s 280(1). Section 280 applies in relation to other offences under the law of England and Wales as it applies in relation to offences under the Merchant Shipping Act 1995 or instruments under that Act: Magistrates' Courts Act 1980 s 3A (added by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 55); Supreme Court Act 1981 s 46A(1) (added by the Merchant Shipping Act 1995 Sch 13 para 59(1), (4)). As to the meanings of 'England' and 'Wales' see PARA 17 note 2. See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1057.

3 lie under the Merchant Shipping Act 1995 s 280(1) (see the text and notes 1-2); see s 280(2).

4 Merchant Shipping Act 1995 s 280(2).

UPDATE

1104 Jurisdiction over ships lying off coasts

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/14. OFFENCES AND LEGAL PROCEEDINGS/(1) PROSECUTION OF OFFENCES GENERALLY/(ii) Jurisdiction/1105. Jurisdiction in case of offences on board ship.

1105. Jurisdiction in case of offences on board ship.

Where any person is charged with having committed any offence under the Merchant Shipping Act 1995, then:

- 1278 (1) if he is a British citizen¹ and is charged with having committed it on board any United Kingdom ship² on the high seas, in any foreign port³ or harbour⁴ or on board any foreign ship⁵ to which he does not belong⁶; or
- 1279 (2) if he is not a British citizen and is charged with having committed it on board any United Kingdom ship on the high seas⁷,

and he is found within the jurisdiction of any court in any part of the United Kingdom which would have had jurisdiction in relation to the offence if it had been committed on board a United Kingdom ship within the limits of its ordinary jurisdiction to try the offence, that court has jurisdiction to try the offence as if it had been so committed⁸.

1 As to the meaning of 'British citizen' see PARA 19 note 7.

2 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

3 As to the meaning of 'port' see PARA 46 note 12.

4 As to the meaning of 'harbour' see PARA 49 note 5.

5 As to the meaning of 'foreign', in relation to a ship, see PARA 19 note 2.

6 Merchant Shipping Act 1995 s 281(a). See note 8.

7 Merchant Shipping Act 1995 s 281(b). See note 8.

8 Merchant Shipping Act 1995 s 281.

However, nothing in s 281 is to be taken to limit the jurisdiction of any court in the United Kingdom to deal with an offence under s 103 (stowaways) (see PARA 1200) which has been committed in a country outside the United Kingdom by a person who is not a British citizen (s 103(2)); and the Aviation and Maritime Security Act 1990 s 14(1) (see PARA 1215) has effect without prejudice to the Merchant Shipping Act 1995 s 281 (Aviation and Maritime Security Act 1990 s 14(3) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 88(1), (2))).

The Merchant Shipping Act 1995 s 281 applies in relation to other offences under the law of England and Wales as it applies in relation to offences under the Merchant Shipping Act 1995 or instruments under that Act: Magistrates' Courts Act 1980 s 3A (added by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 55); Supreme Court Act 1981 s 46A(1) (added by the Merchant Shipping Act 1995 Sch 13 para 59(1), (4)). See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1057. As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

UPDATE

1105 Jurisdiction in case of offences on board ship

NOTE 8--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/14. OFFENCES AND LEGAL PROCEEDINGS/(1) PROSECUTION OF OFFENCES GENERALLY/(ii) Jurisdiction/1106. Offences committed by British seamen.

1106. Offences committed by British seamen.

Any act¹ in relation to property or person done in or at any place, ashore or afloat, outside the United Kingdom² by any master³ or seaman⁴ who at the time is employed in a United Kingdom ship⁵, which, if done in any part of the United Kingdom, would be an offence under the law of any part of the United Kingdom, is an offence under that law and is to be treated, for the purposes of jurisdiction and trial, as if it had been done within the jurisdiction of the Admiralty of England⁶; and this provision⁷ also applies in relation to a person who had been so employed within the period of three months expiring with the time when the act was done⁸.

1 The Merchant Shipping Act 1995 s 282(1), (2) applies to omissions as it applies to acts: s 282(3).

The Merchant Shipping Act 1995 s 282 applies in relation to other offences under the law of England and Wales as it applies in relation to offences under the Merchant Shipping Act 1995 or instruments under that Act: Magistrates' Courts Act 1980 s 3A (added by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 55); Supreme Court Act 1981 s 46A(1) (added by the Merchant Shipping Act 1995 Sch 13 para 59(1), (4)). See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1057. As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

The Aviation and Maritime Security Act 1990 s 14(1) (see PARA 1215) has effect without prejudice to the Merchant Shipping Act 1995 s 282: Aviation and Maritime Security Act 1990 s 14(3) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 88(1), (2)).

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 As to the meaning of 'master' see PARA 424.

4 As to the meaning of 'seaman' see PARA 424.

5 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229.

6 Merchant Shipping Act 1995 s 282(1). See note 1.

7 In the Merchant Shipping Act 1995 s 282(1) (see the text and notes 1-6): see s 282(2).

8 Merchant Shipping Act 1995 s 282(2). See note 1.

UPDATE

1106 Offences committed by British seamen

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/14. OFFENCES AND LEGAL PROCEEDINGS/(1) PROSECUTION OF OFFENCES GENERALLY/(iii) Return of Offenders/1107. Powers exercisable in relation to offenders outside the United Kingdom.

(iii) Return of Offenders

1107. Powers exercisable in relation to offenders outside the United Kingdom.

The powers conferred on a British consular officer¹:

- 1280 (1) to inquire into the case upon oath²; and
- 1281 (2) if the case so requires, to take any steps in his power for the purpose of placing the offender under the necessary restraint and sending him by United Kingdom ship³ as soon as practicable in safe custody to the United Kingdom for proceedings to be taken against him⁴,

are exercisable in the event of any complaint being made to such an officer⁵:

- 1282 (a) that any offence against property or persons has been committed at any place, ashore or afloat, outside the United Kingdom by any master⁶ or seaman⁷ who at the time when the offence was committed, or within three months before that time, was employed in a United Kingdom ship⁸; or
- 1283 (b) that any offence on the high seas has been committed by any master or seaman belonging to any United Kingdom ship⁹.

The consular officer may order the master of any United Kingdom ship bound for the United Kingdom to receive and carry¹⁰ the offender and the witnesses to the United Kingdom; and the officer must indorse upon the agreement of the ship such particulars with respect to them as the Secretary of State requires¹¹. A consular officer must not, however, exercise the power so conferred¹² unless no more convenient means of transport is available or it is available only at disproportionate expense¹³; nor may any master of a ship be so required¹⁴ to receive more than one offender for every 100 tons of his ship's registered tonnage, or more than one witness for every 50 tons of his ship's registered tonnage¹⁵.

The master of any ship to whose charge an offender has been so committed¹⁶ must, on his ship's arrival in the United Kingdom, give the offender into the custody of some police officer or constable¹⁷.

If any master of a ship, when so required¹⁸ to receive and carry any offender or witness in his ship either fails to do so or, in the case of an offender, fails to deliver him as required¹⁹, he is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale²⁰.

The expense of imprisoning any such offender and of carrying him and witnesses to the United Kingdom otherwise than in the ship to which they respectively belong must be paid out of money provided by Parliament²¹.

1 Merchant Shipping Act 1995 s 283(1). As to British consular officers see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 30.

2 Merchant Shipping Act 1995 s 283(2)(a).

3 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping Act 1995 s 283(2)(b).

5 Merchant Shipping Act 1995 s 283(1).

6 As to the meaning of 'master' see PARA 424.

7 As to the meaning of 'seaman' see PARA 424.

8 Merchant Shipping Act 1995 s 283(2)(a).

9 Merchant Shipping Act 1995 s 283(2)(b).

10 For these purposes, references to carrying a person in a ship include affording him subsistence during the voyage: Merchant Shipping Act 1995 s 283(9).

11 Merchant Shipping Act 1995 s 283(3). Section s 283(3) is subject to s 283(4), (5) (see the text and notes 12-15): see s 283(3). As to the Secretary of State see PARA 38.

12 Ie by the Merchant Shipping Act 1995 s 283(3) (see the text and notes 10-11): see s 283(4).

13 Merchant Shipping Act 1995 s 283(4).

14 Ie by the Merchant Shipping Act 1995 s 283(3) (see the text and notes 10-11): see s 283(5).

15 Merchant Shipping Act 1995 s 283(5).

16 Ie under the Merchant Shipping Act 1995 s 283(3) (see the text and notes 10-11): see s 283(6).

17 Merchant Shipping Act 1995 s 283(6).

18 Ie under the Merchant Shipping Act 1995 s 283(3) (see the text and notes 10-11): see s 283(7).

19 Ie as required by the Merchant Shipping Act 1995 s 283(6) (see the text and notes 16-17): see s 283(7).

20 Merchant Shipping Act 1995 s 283(7). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

21 Merchant Shipping Act 1995 s 283(8).

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(iv) Special Evidential Provisions

1108. Depositions of persons abroad admissible.

If the evidence of any person is required in the course of any legal proceeding before a judge or magistrate in relation to the subject matter of the proceeding and it is proved that that person cannot be found in the United Kingdom¹, any deposition that he may have previously made at a place outside the United Kingdom in relation to the same subject matter is admissible in evidence in those proceedings². However, for a deposition to be so admissible in any proceedings, the deposition:

- 1284 (1) must have been taken on oath³;
- 1285 (2) must have been taken before a justice or magistrate in any colony⁴ or a British consular officer⁵ in any other place⁶;
- 1286 (3) must be authenticated by the signature of the justice, magistrate or officer taking it⁷; and
- 1287 (4) must, if the proceedings are criminal proceedings, have been taken in the presence of the accused⁸;

and, in a case falling within head (4) above, the deposition must be certified by the justice, magistrate or officer taking it to have been taken in the presence of the accused⁹.

No proof need be given of the signature or official character of the person appearing to have signed any such deposition¹⁰; and, in any criminal proceedings, a certificate stating that the deposition was taken in the presence of the accused is evidence of that fact, unless the contrary is proved¹¹.

These provisions¹² also apply to proceedings before any person authorised by law or consent of the parties to receive evidence¹³; but nothing in these provisions¹⁴ affects the admissibility in evidence of depositions under any other enactment or the practice of any court¹⁵.

1 As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 Merchant Shipping Act 1995 s 286(1).

3 Merchant Shipping Act 1995 s 286(2)(a).

4 As to the meaning of 'colony' see **STATUTES** vol 44(1) (Reissue) PARA 1383.

5 As to British consular officers see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 30.

6 Merchant Shipping Act 1995 s 286(2)(b).

7 Merchant Shipping Act 1995 s 286(2)(c).

8 Merchant Shipping Act 1995 s 286(2)(d).

9 Merchant Shipping Act 1995 s 286(2).

10 Merchant Shipping Act 1995 s 286(3).

- 11 Merchant Shipping Act 1995 s 286(3).
- 12 Ie the Merchant Shipping Act 1995 s 286: see s 286(4).
- 13 Merchant Shipping Act 1995 s 286(4).
- 14 Ie nothing in the Merchant Shipping Act 1995 s 286: see s 286(5).
- 15 Merchant Shipping Act 1995 s 286(5).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/14. OFFENCES AND LEGAL PROCEEDINGS/(1) PROSECUTION OF OFFENCES GENERALLY/(iv) Special Evidential Provisions/1109. Admissibility in evidence and inspection of certain documents.

1109. Admissibility in evidence and inspection of certain documents.

The following documents are admissible in evidence and, when in the custody of the Registrar General of Shipping and Seamen¹, must be open to public inspection²:

- 1288 (1) documents purporting to be submissions to or decisions by³ superintendents⁴ or proper officers⁵ in disputes relating to the amount payable to a seaman⁶ employed under a crew agreement⁷;
- 1289 (2) the official log book⁸ of any ship⁹ and¹⁰ any document purporting to be a copy of an entry therein and to be certified as a true copy by the master¹¹ of the ship¹²;
- 1290 (3) crew agreements, lists of crews¹³ and notices given¹⁴ of additions to or changes in crew agreements and lists of crews¹⁵;
- 1291 (4) returns or reports¹⁶ of births and deaths in ships etc¹⁷;
- 1292 (5) documents transmitted¹⁸ to the Registrar General of Shipping and Seamen¹⁹.

A certificate issued under the provisions relating to manning²⁰ is admissible in evidence²¹.

1 As to the Registrar General of Shipping and Seamen see PARA 61.

2 Merchant Shipping Act 1995 s 287(1).

3 Ie under the Merchant Shipping Act 1995 s 33 (see PARA 470): see s 287(1)(a).

4 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

5 As to the meaning of 'proper officer' see PARA 48 note 11.

6 As to the meaning of 'seaman' see PARA 424.

7 Merchant Shipping Act 1995 s 287(1)(a). As to the meaning of 'crew agreement' see PARA 450. See also PARA 1110.

As from a day to be appointed by the Secretary of State by order under the Merchant Shipping Act 1995 s 314(3), Sch 14 para 6(1), s 287(1)(a) ceases to have effect: see Sch 14 para 6(1), (2). However, at the date at which this volume states the law, no such day had been appointed. As to the Secretary of State see PARA 38.

8 Ie kept under the Merchant Shipping Act 1995 s 77 (see PARA 531): see s 287(1)(b).

9 As to the meaning of 'ship' see PARA 229.

10 Ie without prejudice to the Merchant Shipping Act 1995 s 288(2) (see PARA 1110): see s 287(1)(b).

11 As to the meaning of 'master' see PARA 424.

12 Merchant Shipping Act 1995 s 287(1)(b).

13 Ie made under the Merchant Shipping Act 1995 s 78 (see PARAS 534-535): see s 287(1)(c).

14 Ie under the Merchant Shipping Act 1995 Pt III (ss 24-84) (see PARA 423 et seq): see s 287(1)(c).

- 15 Merchant Shipping Act 1995 s 287(1)(c).
- 16 le under the Merchant Shipping Act 1995 s 108 (see PARA 654): see s 287(1)(d).
- 17 Merchant Shipping Act 1995 s 287(1)(d).
- 18 le under the Merchant Shipping Act 1995 s 298 (see PARA 43 note 7): see s 287(1)(e).
- 19 Merchant Shipping Act 1995 s 287(1)(e).
- 20 le under the Merchant Shipping Act 1995 s 47 (see PARA 490): see s 287(2).
- 21 Merchant Shipping Act 1995 s 287(2).

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1110. Admissibility of documents in evidence.

Where a document is, by the Merchant Shipping Act 1995, declared to be admissible in evidence¹, the document is, on its production from proper custody:

- 1293 (1) admissible in evidence in any court or before any person having by law or consent of parties authority to receive evidence²; and
- 1294 (2) subject to all just exceptions, evidence of the matters stated in the document³.

A copy of, or extract from, any document so made admissible in evidence is also admissible in evidence and evidence of the matters stated in the document⁴. However, a copy of, or extract from, a document is not so admissible in evidence unless:

- 1295 (a) it is proved to be an examined copy or extract⁵; or
- 1296 (b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted⁶;

and that officer must furnish the certified copy or extract to any person who applies for it at a reasonable time and pays such reasonable price as the Secretary of State determines⁷.

A person is entitled, on payment of such reasonable price as the Secretary of State determines, to have a certified copy of any declaration or document a copy of which is made evidence by the Merchant Shipping Act 1995⁸.

If any officer having duties of certification⁹ in relation to any document intentionally certifies any document being a true copy or extract knowing that the copy or extract is not a true copy or extract, he is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum¹⁰.

1 Unless made in the form approved by the Secretary of State, certain books, instruments etc are not admissible: see the Merchant Shipping Act 1995 s 300(4); and PARA 42.

2 Merchant Shipping Act 1995 s 288(1)(a).

3 Merchant Shipping Act 1995 s 288(1)(b).

4 Merchant Shipping Act 1995s 288(2). For these purposes, in the application of s 288(2) to documents in the custody of the Registrar General of Shipping and Seaman, a copy is to be taken to be the copy of a document notwithstanding that it is taken from a copy or other reproduction of the original: s 289(3). As to the Registrar General of Shipping and Seamen see PARA 61.

5 Merchant Shipping Act 1995 s 288(3)(a).

6 Merchant Shipping Act 1995 s 288(3)(b).

7 Merchant Shipping Act 1995s 288(3). As to the Secretary of State see PARA 38.

8 Merchant Shipping Act 1995s 288(4).

9 lie under the Merchant Shipping Act 1995 s 288(3) (see the text and notes 5-7): see s 288(5).

10 Merchant Shipping Act 1995s 288(5). As to the meaning of 'statutory maximum' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1111. Inspection and admissibility in evidence of copies of certain documents.

Where under any enactment a document is open to public inspection when in the custody of the Registrar General of Shipping and Seamen¹:

- 1297 (1) there may be supplied for public inspection a copy or other reproduction of the document instead of the original²; but
- 1298 (2) the original must nevertheless be made available for public inspection if the copy or other reproduction is illegible³.

Where the Registrar General of Shipping and Seamen destroys any document which has been sent to him under or by virtue of any enactment, and keeps a copy or other reproduction of that document, then:

- 1299 (a) any enactment providing for that document to be admissible in evidence or open to public inspection⁴; and
- 1300 (b) in the case of a document falling within heads (1) and (2) above, those provisions⁵,

apply to the copy or other reproduction as if it were the original⁶.

For these purposes, a copy is to be taken to be the copy of a document notwithstanding that it is taken from a copy or other reproduction of the original⁷.

1 Merchant Shipping Act 1995 s 289(1). As to the Registrar General of Shipping and Seamen see PARA 61.

2 Merchant Shipping Act 1995 s 289(1)(a).

3 Merchant Shipping Act 1995 s 289(1)(b).

4 Merchant Shipping Act 1995 s 289(2)(a).

5 Merchant Shipping Act 1995 s 289(2)(b).

6 Merchant Shipping Act 1995 s 289(2).

7 Merchant Shipping Act 1995 s 289(3).

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/14. OFFENCES AND LEGAL PROCEEDINGS/(1) PROSECUTION OF OFFENCES GENERALLY/(iv) Special Evidential Provisions/1112. Proof etc of exemptions.

1112. Proof etc of exemptions.

Where any exception, exemption, excuse or qualification applies in relation to an offence under the Merchant Shipping Act 1995, it may be proved by the accused but need not be specified or negatived in any information or complaint¹. However, if any exception, exemption, excuse or qualification is so specified or negatived, it does not require to be proved by the informant or complainant².

These provisions³ apply in relation to an offence whether or not the exception, exemption, excuse or qualification is contained in the statutory provision creating the offence⁴.

1 Merchant Shipping Act 1995 s 290(1).

2 Merchant Shipping Act 1995 s 290(1).

3 Ie the Merchant Shipping Act 1995 s 290: see s 290(2).

4 Merchant Shipping Act 1995 s 290(2).

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(2) SPECIFIC OFFENCES

(i) Offences relating to Registration of Ships

1113. Offences relating to British character of ship.

If the master¹ or owner of a ship² which is not a British ship³ does anything, or permits anything to be done, for the purpose of causing the ship to appear to be a British ship⁴, the ship is⁵ liable to forfeiture⁶ and the master, the owner and any charterer are each guilty of an offence⁷. However, no such liability arises where the assumption of British nationality has been made for the purpose of escaping capture by an enemy or by a foreign⁸ ship of war in the exercise of some belligerent right⁹; and where the registration of any ship has terminated by virtue of any provision of registration regulations¹⁰, any marks prescribed by registration regulations displayed on the ship within the period of 14 days beginning with the date of termination of that registration are disregarded for the purposes of establishing such liability¹¹.

If the master or owner of a British ship does anything, or permits anything to be done, for the purpose of concealing the nationality of the ship¹², the ship is liable to forfeiture and the master, the owner and any charterer of the ship are each guilty of an offence¹³.

Any person guilty of an offence relating to the British character of a ship¹⁴ is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding £50,000¹⁵.

These offences¹⁶ apply to things done outside, as well as to things done within, the United Kingdom¹⁷.

1 As to the meaning of 'master' for these purposes see PARA 424.

2 As to the meaning of 'ship' for these purposes see PARA 229.

3 As to the meaning of 'British ship' see PARA 230.

4 This provision applies in particular to acts or deliberate omissions as respects: (1) the flying of a national flag (Merchant Shipping Act 1995 s 3(5)(a)); (2) the carrying or production of certificates of registration or other documents relating to the nationality of the ship (s 3(5)(b)); and (3) the display of marks required by the law of any country (s 3(5)(c)). This is without prejudice to the generality of s 3(1): see s 3(5).

5 Is subject to the Merchant Shipping Act 1995 s 3(2), (3) (see the text and notes 8-11): see s 3(1).

6 As to proceedings on forfeiture of a ship see PARA 235.

7 Merchant Shipping Act 1995 s 3(1).

8 As to the meaning of 'foreign', in relation to a ship, see PARA 19 note 2.

9 Merchant Shipping Act 1995 s 3(2).

10 As to the meaning of 'registration regulations' see PARA 247.

11 Merchant Shipping Act 1995 s 3(3).

12 This provision applies in particular to acts or deliberate omissions as respects: (1) the flying of a national flag (Merchant Shipping Act 1995 s 3(5)(a)); (2) the carrying or production of certificates of registration or other documents relating to the nationality of the ship (s 3(5)(b)); and (3) the display of marks required by the law of any country (s 3(5)(c)). This is without prejudice to the generality of s 3(4): see s 3(5).

13 Merchant Shipping Act 1995 s 3(4).

14 Ie under the Merchant Shipping Act 1995 s 3: see s 3(6).

15 Merchant Shipping Act 1995 s 3(6). As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

16 Ie the offences set out in the Merchant Shipping Act 1995 s 3: see s 3(7).

17 Merchant Shipping Act 1995 s 3(7). As to the meaning of 'United Kingdom' see PARA 17 note 3.

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1114. Penalty for carrying improper colours.

If any of the following colours¹, namely:

- 1301 (1) any distinctive national colours except: (a) the red ensign²; (b) the Union flag (commonly known as the Union Jack) with a white border³; or (c) any colours duly authorised or confirmed for adoption by British ships⁴ registered⁵ in a relevant British possession⁶;
- 1302 (2) any colours usually worn by Her Majesty's ships or resembling those of Her Majesty⁷; or
- 1303 (3) the pendant usually carried by Her Majesty's ships or any pendant resembling that pendant⁸,

are hoisted on board any British ship without warrant from Her Majesty or from the Secretary of State⁹, the master¹⁰ of the ship, or the owner of the ship (if on board), and every other person hoisting them are guilty of an offence¹¹; and each person so guilty is liable, on conviction on indictment, to a fine or, on summary conviction, to a fine not exceeding the statutory maximum¹².

If any colours are hoisted on board a ship in contravention¹³ of the above prohibition¹⁴, any of the following, namely:

- 1304 (i) any commissioned naval¹⁵ or military officer¹⁶;
- 1305 (ii) any officer of Revenue and Customs¹⁷; and
- 1306 (iii) any British consular officer¹⁸,

may board the ship and seize and take away the colours¹⁹; and any colours so seized are forfeited to Her Majesty²⁰.

1 For these purposes, 'colours' includes any pendant: Merchant Shipping Act 1995 s 4(5).

2 Merchant Shipping Act 1995 s 4(1)(a)(i).

3 Merchant Shipping Act 1995 s 4(1)(a)(ii).

4 As to the meaning of 'British ship' see PARA 230; and as to the meaning of 'ship' see PARA 229.

5 As to the meaning of 'registered' for these purposes see PARA 254 note 2.

6 Merchant Shipping Act 1995 s 4(1)(a)(iii). The text refers to any colours authorised or confirmed under s 2(3)(b) (see PARA 231): see s 4(1)(a)(iii). As to the meaning of 'relevant British possession' for these purposes see PARA 17 note 3.

7 Merchant Shipping Act 1995 s 4(1)(b).

8 Merchant Shipping Act 1995 s 4(1)(c).

9 As to the Secretary of State see PARA 38.

10 As to the meaning of 'master' for these purposes see PARA 424.

11 Merchant Shipping Act 1995 s 4(1).

12 Merchant Shipping Act 1995 s 4(2). As to the meaning of 'statutory maximum' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

13 As to the meaning of 'contravention' see PARA 50 note 3.

14 Is in contravention of the Merchant Shipping Act 1995 s 4(1) (see the text and notes 1-11): see s 4(3).

15 As to the meaning of 'commissioned naval officer' see PARA 47 note 12.

16 Merchant Shipping Act 1995 s 4(3)(a). As to the meaning of 'commissioned military officer' see PARA 235 note 4.

17 Merchant Shipping Act 1995 s 4(3)(b) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

18 Merchant Shipping Act 1995 s 4(3)(c). As to British consular officers see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 30.

19 Merchant Shipping Act 1995 s 4(3).

20 Merchant Shipping Act 1995 s 4(4).

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1115. Contravention of registration provisions.

A person is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale¹ if he contravenes² the provision³ that requires the owner of a ship that becomes registered under the Merchant Shipping Act 1995 at a time when it is already registered under the law of a country other than the United Kingdom⁴ to take all reasonable steps to secure the termination of the ship's registration under the law of that country⁵.

1 As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

2 As to the meaning of 'contravention' see PARA 50 note 3.

3 I.e. the provision contained in the Merchant Shipping Act 1995 s 9(5) (see PARA 245); see s 9(7). Section 9(5) does not apply to a ship which becomes registered on a transfer of registration to the register from a relevant British possession: see s 9(6); and PARA 245. As to the meaning of 'register' and 'registered' for these purposes see PARA 254 note 2. As to the meaning of 'relevant British possession' for these purposes see PARA 17 note 3. As to the meaning of 'ship' see PARA 229.

4 As to the meaning of 'United Kingdom' see PARA 17 note 3.

5 Merchant Shipping Act 1995 s 9(7).

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1116. Offences relating to a ship's British connection.

Any person who, in relation to any matter relevant to the British connection¹ of a ship²:

- 1307 (1) makes to the registrar³ a statement which he knows to be false or recklessly makes a statement which is false⁴; or
- 1308 (2) furnishes to the registrar information which is false⁵,

is guilty of an offence⁶.

If at any time there occurs, in relation to a registered⁷ ship, any change affecting the British connection of the ship, the owner of the ship must, as soon as practicable after the change occurs, notify the registrar of that change; and, if he fails to do so, he is guilty of an offence⁸.

Any person who intentionally alters, suppresses, conceals or destroys a document which contains information relating to the British connection of the ship and which he has been required to produce to the registrar in pursuance of registration regulations⁹ is guilty of an offence¹⁰.

A person guilty of any such offence¹¹ is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding the statutory maximum¹².

1 As to the meaning of references to a ship's having a British connection see PARA 245 note 3.

2 As to the meaning of 'ship' see PARA 229.

3 As to the meaning of 'registrar' see PARA 254 note 11.

4 Merchant Shipping Act 1995 s 14(1)(a).

5 Merchant Shipping Act 1995 s 14(1)(b).

6 Merchant Shipping Act 1995 s 14(1).

7 As to the meaning of 'registered' for these purposes see PARA 254 note 2.

8 Merchant Shipping Act 1995 s 14(2).

9 As to the registration regulations see PARA 247.

10 Merchant Shipping Act 1995 s 14(3).

11 Ie any offence under the Merchant Shipping Act 1995 s 14 (see the text and notes 1-10): see s 14(4). Section 14 applies to things done outside, as well as to things done within, the United Kingdom: s 14(5). As to the meaning of 'United Kingdom' see PARA 17 note 3.

12 Merchant Shipping Act 1995 s 14(4). As to the meaning of 'statutory maximum' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1117. Offences in relation to fishing vessels not registered under the Merchant Shipping Act 1995.

If a fishing vessel¹:

- 1309 (1) which is either entitled to be registered under the Merchant Shipping Act 1995², or wholly owned by persons qualified to be owners of British ships³; but
- 1310 (2) which is registered neither under the Merchant Shipping Act 1995 in the part of the register⁴ relating to fishing vessels nor under the law of any country outside the United Kingdom⁵,

fishes for profit, the vessel is liable to forfeiture⁶ and the skipper, the owner and the charterer of the vessel are each guilty of an offence⁷. This prohibition does not, however, apply to fishing vessels of such classes or descriptions or in such circumstances as may be specified in regulations made by the Secretary of State⁸.

If the skipper or owner of a fishing vessel which is not registered in the United Kingdom does anything, or permits anything to be done, for the purpose of causing the vessel to appear to be a vessel registered in the United Kingdom, the vessel is liable to forfeiture and the skipper, the owner and any charterer of the vessel are each guilty of an offence⁹. Where, however, the registration of a fishing vessel has terminated by virtue of any provision of registration regulations, any marks prescribed by registration regulations displayed on the fishing vessel within the period of 14 days beginning with the date of termination of that registration are to be disregarded for the purposes of this offence¹⁰.

Any person guilty of any such offence¹¹ is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding £50,000¹². Proceedings for such an offence¹³ may not be instituted in England and Wales¹⁴ except by or with the consent of the Attorney General or the Secretary of State¹⁵.

1 As to the meaning of 'fishing vessel' see PARA 230 note 9.

2 As to the meaning of 'registered' for these purposes see PARA 254 note 2.

3 Merchant Shipping Act 1995 s 15(1)(a). As to the meaning of 'British ship' see PARA 230; and as to the meaning of 'ship' see PARA 229.

4 As to the meaning of 'register' for these purposes see PARA 254 note 2.

5 Merchant Shipping Act 1995 s 15(1)(b). As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 As to proceedings on forfeiture of a ship for these purposes see PARA 253.

7 Merchant Shipping Act 1995 s 15(1). Section 15 applies to things done outside, as well as to things done within, the United Kingdom: s 15(8).

The Sea Fisheries Act 1968 ss 8, 9 (general powers of British sea-fishery officers and powers of sea-fishery officers to enforce conventions) (see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARAS 789-791) is to apply in relation to any provision of the Merchant Shipping Act 1995 s 15 or of registration regulations in their application to fishing vessels or fishing vessels of any class or description as they apply in relation to any order mentioned in the Sea Fisheries Act 1968 s 8 and in relation to any convention mentioned in s 9 respectively;

and ss 10-12, 14 (offences and supplemental provisions as to legal proceedings) (see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 794 et seq) apply accordingly: Merchant Shipping Act 1995 s 15(9). As to the meaning of 'registration regulations' see PARA 247.

8 Merchant Shipping Act 1995 s 15(2). As to the Secretary of State see PARA 38. At the date at which this volume states the law, no such regulations had been made under s 15(2) but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138 (as to which see PARA 255 et seq) have effect as if so made. As to the Secretary of State's power to make regulations under the Merchant Shipping Act 1995 generally see PARA 41.

9 Merchant Shipping Act 1995 s 15(3). See note 7.

10 Merchant Shipping Act 1995 s 15(4). The text refers to marks being disregarded for the purposes of s 15(3) (see the text and note 9): see s 15(4).

11 Ie an offence under the Merchant Shipping Act 1995 s 15 (see the text and notes 1-10): see s 15(5).

12 Merchant Shipping Act 1995 s 15(5). As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

13 Ie an offence under the Merchant Shipping Act 1995 s 15 (see the text and notes 1-10): see s 15(6).

14 As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

15 Merchant Shipping Act 1995 s 15(6) (amended by SI 2002/794). As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

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1118. Failure to supply details of engine power of fishing vessels on certain applications.

Where an application is made:

- 1311 (1) to register¹ certain fishing vessels (whether new or second hand)²;
- 1312 (2) to record³ a change in the length, breadth or engine power of a registered fishing vessel⁴; or
- 1313 (3) to register⁵ a change of ownership of a registered fishing vessel (or share in such vessel)⁶,

the applicant must submit details of the maximum continuous engine power⁷ and, where an engine is permanently de-rated⁸, the modification explanation⁹. Any owner¹⁰ who contravenes the requirement to submit such details is guilty of an offence¹¹ and is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale¹².

1 le under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 28 (see PARA 275): see reg 29A(1)(a); and PARA 275. The text refers to fishing vessels other than those requiring simple registration: see reg 28(1); and PARA 275. As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7; and as to the meaning of 'simple registration' see PARA 256.

2 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(1)(a); and PARA 275.

3 le under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51 (see PARA 314): see reg 29A(1)(b); and PARA 314.

4 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(1)(b); and PARA 314.

5 le under the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50 (see PARA 313): see reg 29A(1)(c); and PARA 313.

6 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(1)(c); and PARA 313.

7 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(2)(a); and PARAS 275, 313. As to the meaning of 'maximum continuous engine power' see PARA 275 note 14.

8 As to the meaning of 'permanently de-rated engine power' see PARA 275 note 15.

9 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(2)(b); and PARAS 275, 313. As to the meaning of 'modification explanation' see PARA 275 note 15.

10 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

11 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 29A(3) (reg 29A added by SI 1999/3206).

12 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(7) (amended by SI 1999/3206). As to the meaning of 'standard scale' see PARA 1099.

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1119. Failure to notify changes of ownership etc of ship.

If at any time there occurs, in relation to a registered ship¹: (1) any change affecting the eligibility of the ship to be registered, not being a change which affects the qualification or eligibility of the owner² or the British connection of a ship³; or (2) in respect of a fishing vessel⁴, any change, not affecting that eligibility, in the percentage of the property in the ship beneficially owned⁵ by qualified persons or companies⁶, the owner of the ship must, as soon as practicable after the change occurs, notify the registrar⁷. Any person who contravenes the requirement to notify the registrar of such changes as are mentioned in heads (1) and (2) above is guilty of an offence⁸ and is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale⁹.

Where there is any transfer or transmission of a registered ship or share in a registered ship¹⁰, any person who fails to notify the registrar, to surrender the certificate of registry¹¹, or to make the applications that are required for such a transfer or transmission to be registered¹² is guilty of an offence¹³ and is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale¹⁴.

When there is a change either in the registered particulars of a ship (including a change in the tonnage of the ship) or in the name or address of an owner entered in the register¹⁵ (not being a change of ownership)¹⁶, any person who fails to make such an application as is required for the change to be recorded in the register¹⁷ is guilty of an offence¹⁸ and is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale¹⁹.

If at any time there occurs, in relation to a bareboat charter ship²⁰, any change affecting the eligibility of the ship to be registered²¹, the charterer of the ship must, as soon as practicable after the change occurs, notify the registrar²². Any person who contravenes this requirement²³ is guilty of an offence²⁴ and is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale²⁵.

1 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

2 As prescribed in the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 7 (qualification) (see PARA 258) and reg 12 (eligibility) (see PARA 262): see reg 49(1)(a); and PARA 313. As to the meaning of 'owner' for these purposes see PARA 255 note 13.

3 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 49(1)(a); and PARA 313. The text refers to changes affecting the British connection of a ship as prescribed in reg 8 (British connection and majority interest in the ship) (see PARA 259) and reg 14 (British connection and representative persons for fishing vessels) (see PARA 263): see reg 49(1)(a); and PARA 313. As to the meaning of references under the Merchant Shipping Act 1995 to a ship's having a British connection see PARA 245 note 3.

4 As to the meaning of 'fishing vessel' for these purposes see PARA 255 note 7.

5 As to the meaning of 'beneficial ownership' for these purposes see PARA 262 note 15.

6 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 49(1)(b); and PARA 313.

7 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 49(1); and PARA 313. As to the meaning of 'registrar' see PARA 255 note 2.

- 8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 49(3).
- 9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(7) (amended by SI 1999/3206). As to the meaning of 'standard scale' see PARA 1099.
- 10 As to an application for the transfer of a registered ship (or shares therein) see the Merchant Shipping Act 1995 s 16(1), Sch 1 para 2; and PARA 306. As to an application for the transmission of a registered ship (or shares therein) see Sch 1 para 3; and PARA 306.
- 11 As to the meaning of 'certificate of registry' see PARA 255 note 17.
- 12 le as required by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50(1), (2) or (3) (as to which see PARA 313): see reg 50(4) (added by SI 1999/3206).
- 13 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 50(4) (as added: see note 12).
- 14 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(9) (added by SI 1999/3206).
- 15 As to the meaning of 'register' see PARA 255 note 1.
- 16 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51; and PARA 314. The provisions of reg 51 apply to Pt X (regs 73-87) (see PARA 358 et seq) as if any reference in those provisions to the owner were a reference to the charterer: see reg 85; and PARA 366.
- 17 le as required by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51(1) or (3) (as to which see PARA 314): see reg 51(5) (added by SI 1999/3206). See note 16.
- 18 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 51(5) (as added: see note 17).
- 19 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(9) (as added: see note 14).
- 20 As to the meaning of 'bareboat charter ship' see PARA 255 note 9.
- 21 As to the qualification and entitlement to register bareboat charter ships other than fishing vessels see PARA 358; and as to the qualification and entitlement to register a fishing vessel as a bareboat charter ship see PARA 359.
- 22 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 84(1); and PARA 366.
- 23 le any person who contravenes the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 84(1) (see the text and notes 20-22): see reg 84(3).
- 24 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 84(3).
- 25 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(7) (as amended: see note 9).

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1120. Offence of obscuring registration markings.

It is an offence on the part of the owner¹ or master of a registered ship² if any of the marks required³ to be marked on a ship is effaced, altered, allowed to become illegible, covered or concealed⁴. Such an offence is punishable, on conviction on indictment, by a fine or, on summary conviction, by a fine not exceeding the statutory maximum⁵. It is, however, a defence for a person charged with such an offence to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence or that the effacing, alteration, covering or concealing of the marking was for the purpose of escaping capture by an enemy⁶.

1 As to the meaning of 'owner' for these purposes see PARA 255 note 13.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 Is required by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138 (as to which see PARAS 280 et seq, 351, 363): see reg 114(2).

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(2).

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(8). As to the meaning of 'statutory maximum' see PARA 1099.

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(3).

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1121. Offences related to registration documents and the supply of information.

Any person who:

- 1314 (1) with an intent to deceive, uses or lends or allows to be used by another, a certificate of registry¹, whether in force or not²; or
- 1315 (2) in connection with the registration of a ship³ knowingly or recklessly furnishes information which is false in a material particular⁴; or
- 1316 (3) intentionally alters, suppresses, conceals or destroys a document which he has been required⁵ to produce to the registrar⁶,

is guilty of an offence⁷. The offences under heads (1) to (3) above are punishable, on summary conviction, with a fine not exceeding level 5 on the standard scale⁸.

1 As to the meaning of 'certificate of registry' see PARA 255 note 17.

2 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(1).

3 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

4 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(5).

5 Ie required by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138: see reg 114(8).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(6). As to the meaning of 'registrar' see PARA 255 note 2.

7 See the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(1), (5), (6).

8 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(7) (amended by SI 1999/3206). As to the meaning of 'standard scale' see PARA 1099.

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1122. Refusal to surrender certificate of registry when required.

If any person refuses, without reasonable cause, to surrender the certificate of registry¹ when in his possession or under his control to the person entitled to its custody for the purposes of the lawful navigation of the ship², or to the registrar³, or an officer of revenue and customs⁴ or any other person entitled by law to demand such delivery, he is guilty of an offence⁵ and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale⁶.

Any person who fails, without reasonable cause, to surrender a certificate of registry when required to do so by the provisions which govern the issue of duplicate certificates⁷, or to return a certificate of registry when required to do so on the termination or expiry of a ship's registration⁸, also commits an offence⁹ and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale¹⁰.

1 As to the meaning of 'certificate of registry' see PARA 255 note 17.

2 As to the meaning of 'ship' for these purposes see PARA 255 note 4.

3 As to the meaning of 'registrar' see PARA 255 note 2.

4 As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

5 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 109(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)), Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(4).

6 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(7) (amended by SI 1999/3206). As to the meaning of 'standard scale' see PARA 1099.

7 Ie when required to do so by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 108 (see PARA 373): see reg 114(4).

8 Ie when required to do so by the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 110 (see PARA 375): see reg 114(4).

9 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(4).

10 Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 114(7) (as amended: see note 6).

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1123. Contravention of provisions relating to the registration, certification, maintenance and operation of hovercraft.

If any of the provisions governing the registration, certification, maintenance and operation of hovercraft¹ is contravened in relation to a hovercraft, the hovercraft's operator² and captain³ (without prejudice to the liability of any other person for that contravention) are deemed⁴ to have contravened that provision unless he proves that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent it⁵. If it is proved that an act or omission of any person which would otherwise have been a contravention by that person of any of those provisions was due to any cause not avoidable by the exercise of reasonable care by that person, the act or omission is deemed not to be a contravention by that person of that provision⁶.

Varying penalties are imposed for contravention of the provisions relating to hovercraft⁷.

1 le the provisions of the Hovercraft (General) Order 1972, SI 1972/674 (see PARA 387 et seq): see art 33(1). As to the meaning of 'hovercraft' under the Hovercraft Act 1968 see PARA 381. As to the hovercraft to which the Hovercraft (General) Order 1972, SI 1972/674, applies see PARA 387; and as to Crown application see PARA 388.

2 As to the meaning of 'operator' see PARA 388 note 2.

3 As to the meaning of 'captain' see PARA 388 note 6.

4 le for the purposes of the Hovercraft (General) Order 1972, SI 1972/674, art 33(3)-(5) (as to which see note 7): see art 33(1).

5 Hovercraft (General) Order 1972, SI 1972/674, art 33(1).

6 Hovercraft (General) Order 1972, SI 1972/674, art 33(2).

7 The penalties referred to in the text are:

16 (1) if any person contravenes any of the Hovercraft (General) Order 1972, SI 1972/674, art 4 (see PARA 390), art 6 (see PARA 394), art 21 (see PARA 406), art 23 (see PARA 407), art 24 (see PARA 409), and art 30 (see PARA 410), he is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale (art 33(4), Schedule Pt A (art 33(3)-(5) substituted by SI 1996/3173));

17 (2) if any person contravenes any of the Hovercraft (General) Order 1972, SI 1972/674, art 7 (see PARA 395), art 8 (see PARA 397), art 13 (see PARA 400), art 15 (see PARA 401), art 18 (see PARA 403), art 19 (see PARA 404), art 20 (see PARA 405), art 22 (see PARA 408), art 26 (see PARA 410), art 27 (see PARA 411) and art 28 (see PARA 413), he is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale (art 33(5), Schedule Pt B (art 33(5) as so substituted));

18 (3) if any person contravenes any provision of the Hovercraft (General) Order 1972, SI 1972/674, other than those referred to in heads (1), (2) above, he is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale (art 33(3) (as so substituted)).

As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; and as to jurisdiction in relation to offences see PARA 1103 et seq.

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(ii) Crew-related Offences

A. OFFENCES COMMITTED IN RELATION TO CREW

1124. Offences relating to crew agreements.

If a ship¹ goes to sea² or attempts to go to sea in contravention³ of the requirements relating to crew agreements⁴, the master⁵ or the person employing the crew is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale⁶. The ship in question, if in the United Kingdom, may be detained⁷.

A person who fails to comply with an obligation imposed on him by or under the provisions relating to the delivery of a crew agreement⁸ is guilty of an offence⁹ and liable, on summary conviction, to a fine not exceeding level 2 on the standard scale¹⁰.

Similarly, a master who fails to comply with an obligation imposed on him by or under the provisions relating either to the display of a crew agreement¹¹ or to the production to specified officers on demand of such an agreement (or of an exemption from the requirement to carry such an agreement)¹² is guilty of an offence¹³ and liable, on summary conviction, to a fine not exceeding level 2 on the standard scale¹⁴.

A person or, as the case may be, a master who fails to comply with an obligation imposed on him to supply and produce copy documents related to the crew agreement on demand to a seaman¹⁵ also is guilty of an offence¹⁶ and liable, on summary conviction, to a fine not exceeding level 2 on the standard scale¹⁷.

1 As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229.

2 For these purposes, references to going to sea include references to going to sea from any country outside the United Kingdom: Merchant Shipping Act 1995 s 84(2). As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 As to the meaning of 'contravention' see PARA 50 note 3.

4 Ie in contravention of the requirements of the Merchant Shipping Act 1995 s 25 (as to which see PARA 450): see s 25(8). As to the meaning of 'crew agreement' see PARA 450.

5 As to the meaning of 'master' see PARA 424.

6 Merchant Shipping Act 1995 s 25(8). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

7 Merchant Shipping Act 1995 s 25(8). As to enforcing the detention of a ship see PARA 1253.

8 Ie under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 6 (see PARA 454): see reg 10(1).

9 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 10(1).

10 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 10(3).

11 *Ie* under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 7 (see PARA 455): see reg 10(2).

12 *Ie* under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 9 (see PARA 457): see reg 10(1), (2).

13 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 10(2).

14 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 10(3).

15 *Ie* under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 8 (see PARA 456): see reg 10(1), (2).

16 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 10(1), (2).

17 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 10(3).

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1125. Failure to observe proper procedure when a seaman is discharged.

Any person, including a master, who fails to comply with an obligation imposed on him:

- 1317 (1) by or under the provisions requiring him on a seaman's discharge (where the seaman is present) to record specified particulars: (a) in the seaman's discharge book¹ (or to give him a certificate of discharge containing the like particulars)²; or (b) by making an entry in the official log book³; or (c) by making an entry in a crew agreement or in a list of crew⁴; or
- 1318 (2) by or under the provisions requiring the master (or one of the ship's officers authorised by him in that behalf) to give to the seaman on request a certificate (which must be separate from any other document) either as to the quality of his work or indicating whether he has fully discharged his obligations under his contract of employment⁵,

is guilty of an offence⁶ and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale⁷.

A master who fails to comply with an obligation imposed on him:

- 1319 (i) by or under the provisions requiring him to give a notice of discharge in writing to a superintendent⁸ or proper officer⁹ for the place where a seaman is to be discharged¹⁰; or
- 1320 (ii) by or under the provisions requiring him to ensure that the seaman is discharged in the presence of the master himself, or the seaman's employer or a person authorised in that behalf by the master or employer¹¹; or
- 1321 (iii) by or under the provisions requiring him (or a person authorised in that behalf by the master), where a seaman is not present when he is discharged, to make the entries referred to in heads (1)(b) and (1)(c) above¹²; or
- 1322 (iv) by or under the provisions mentioned in head (2) above¹³,

is guilty of an offence¹⁴ and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale¹⁵.

A seaman who fails to comply with an obligation imposed on him by or under the provisions requiring him to sign the entry in the crew agreement and list of crew referred to in head (1)(c) above¹⁶ is guilty of an offence¹⁷ and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale¹⁸.

1 As to discharge books see PARA 551 et seq.

2 I.e. an obligation imposed by or under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1)(a) (see PARA 462): see reg 26(1)(a).

3 I.e. an obligation imposed by or under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1)(c)(i) (see PARA 462): see reg 26(1)(a). As to the official log book see PARAS 531-533.

- 4 le an obligation imposed by or under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1)(c)(ii) (see PARA 462): see reg 26(1)(b). As to crew agreements see PARA 450 et seq.
- 5 le an obligation imposed by or under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(4) (see PARA 462): see reg 26(1)(a).
- 6 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 26(1).
- 7 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 26(4)(a). As to the meaning of 'standard scale' see PARA 1099.
- 8 As to the meaning of 'superintendent' for these purposes see PARA 60 note 1.
- 9 As to the meaning of 'proper officer' for these purposes see PARA 48 note 11.
- 10 le an obligation imposed by or under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 23(1) (see PARA 461) in the event of any dispute about a seaman's wages, and where that dispute is at the time of discharge to be submitted to a superintendent or proper officer under the Merchant Shipping Act 1995 s 33 (see PARA 470): see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 26(2).
- 11 le an obligation imposed by or under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1)(b) (see PARA 462): see reg 26(2).
- 12 le an obligation imposed by or under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(2) (see PARA 462): see reg 26(2).
- 13 le an obligation imposed by or under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(4) (see PARA 462): see reg 26(2).
- 14 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 26(2).
- 15 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 26(4)(a).
- 16 le an obligation imposed by or under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 25(1)(d) (see PARA 462): see reg 26(3).
- 17 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 26(3).
- 18 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 26(4)(b).

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1126. Failure to administer proper payment of seamen's wages.

If a person fails without reasonable excuse to comply with the provisions which govern the accounting of a seaman's wages¹, he is liable, on summary conviction, to a fine not exceeding level 2 on the standard scale².

If a person fails without reasonable excuse to comply with the provisions which govern the accounting of wages (and catch where wages are related to catch) in relation to a United Kingdom fishing vessel³, he is liable, on summary conviction, to a fine not exceeding level 2 on the standard scale⁴.

1 Ie the Merchant Shipping Act 1995 s 31(1)-(5) (as to which see PARA 468): see s 31(6). As to the meaning of 'seaman' see PARA 424; and as to the meaning of 'wages' see PARA 464 note 6.

2 Merchant Shipping Act 1995 s 31(6). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

3 Ie the Merchant Shipping Act 1995 s 112(1)-(4) (see PARA 481): see s 112(5). As to the meaning of 'fishing vessel' see PARA 230 note 9; and as to the meaning of 'United Kingdom fishing vessel' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to crew agreements relating to fishing vessels see PARA 458.

4 Merchant Shipping Act 1995 s 112(5).

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1127. Failure to provide approved equipment in crew accommodation.

Any owner who fails to ensure the supply of approved equipment¹ as required by the regulations relating to crew accommodation² is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale³. However, it is a defence in any proceedings for such an offence to prove that the person so charged took all reasonable steps to ensure that the regulations were complied with⁴.

Any ship that does not comply with the requirements for equipment in crew accommodation to be of an approved type⁵ is liable to be detained⁶.

1 Ie any owner who contravenes the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 36(1) (see PARA 486): see reg 38(1). As to the meaning of 'approved', in relation to an item of equipment, for these purposes see PARA 486 note 39.

2 Ie the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508: see PARA 486. As to exemptions see PARA 486.

3 Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 38(1). As to the meaning of 'standard scale' see PARA 1099.

4 Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 38(2).

5 Ie the requirements of the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, Pt III (regs 36-39) (see PARA 486): see reg 39.

6 Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, reg 39. The Merchant Shipping Act 1995 s 284(1)-(6), (8) (enforcing detention of ships) (see PARA 1253) has effect in relation to the ship, subject to the modification that, for the words 'this Act' wherever they appear, there are to be substituted 'the Merchant Shipping (Crew Accommodation) Regulations 1997, SI 1997/1508, Pt III': see reg 39.

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1128. Master's failure to deal with complaints about provisions or water.

If the master¹ fails without reasonable excuse to comply with the procedure governing complaints made to a superintendent² or proper officer³ by seamen⁴ employed in a United Kingdom ship⁵ about provisions or water⁶, he is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale⁷; and, if the master has been notified in writing by the person duly making an examination of the provisions or water⁸ that any provisions or water are found to be unfit for use or not of the quality required by the safety regulations⁹, then:

- 1323 (1) if they are not replaced within a reasonable time, the master or owner is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale unless he proves that the failure to replace them was not due to his neglect or default¹⁰; or
- 1324 (2) if the master without reasonable excuse permits them to be used, he is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale¹¹.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

3 As to the meaning of 'proper officer' see PARA 48 note 11.

4 As to the meaning of 'seaman' see PARA 424.

5 As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 I.e a failure to comply with the provisions of the Merchant Shipping Act 1995 s 44(2) (see PARA 487): see s 44(4).

7 Merchant Shipping Act 1995 s 44(4). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

8 I.e under the Merchant Shipping Act 1995 s 44(3) (see PARA 487): see s 44(4).

9 Merchant Shipping Act 1995 s 44(4). As to the meaning of 'safety regulations' see PARA 591. As to the relevant requirements see PARA 627.

10 Merchant Shipping Act 1995 s 44(4)(a).

11 Merchant Shipping Act 1995 s 44(4)(b).

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1129. Falsely obtaining documents issued in relation to manning.

If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a certificate or other document which may be issued under the provisions governing the manning of ships¹, he is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale².

If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a British seaman's card³, he is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale⁴.

1 le the Merchant Shipping Act 1995 s 47 (see PARA 490): see s 47(5). As to the application of s 47 see PARAS 423, 489. As to the power to grant exemptions with respect to fishing vessels see PARA 425. As to the meaning of 'ship' see PARA 229.

2 Merchant Shipping Act 1995 s 47(5). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

3 As to British seaman's cards see PARA 544 et seq.

4 Merchant Shipping Act 1995 s 79(4).

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1130. Owner's failure to ensure that hovercraft personnel have the required training.

Any owner of a hovercraft¹ who contravenes his duty to ensure that masters and officers, ratings and other personnel have completed the training specified by the Secretary of State² is guilty of an offence and liable, on conviction on indictment, to a fine or, on summary conviction, to a fine not exceeding the statutory maximum³.

1 le every sea-going hovercraft registered in the United Kingdom which was constructed on or after 1 January 1996: see the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 22(1); and PARA 496.

2 le the duty contained in the Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 22(2) (see PARA 496): see reg 22(4). It is the duty of any person providing such training also to issue documentary evidence to every person successfully completing such training: see regs 22(3), 23; and PARA 496. As to exemptions from the requirements of reg 22 see reg 24; and PARA 496. As to the Secretary of State see PARA 38.

3 Merchant Shipping (Training and Certification) Regulations 1997, SI 1997/348, reg 22(4). As to the meaning of 'statutory maximum' see PARA 1099.

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1131. Contravention of duties in relation to certification, training etc.

Any company¹ which contravenes its duty:

- 1325 (1) to ensure that every master and seaman assigned to any of its ships holds appropriate documentation and certification, and has had appropriate training, in respect of any function he is to perform on that ship²; or
- 1326 (2) to provide written instructions to the master of each of its ships setting out the policies and the procedures to be followed (including designation of a knowledgeable crew member) to ensure that all seamen who are newly employed on board the ship are given a reasonable opportunity to become familiar with the shipboard equipment, operating procedures and other arrangements needed for the proper performance of their duties, before being assigned to those duties³; or
- 1327 (3) to ensure that there are carried at all times on board ship all original certificates and other documents issued pursuant to the STCW Convention⁴ indicating the qualification of any member of the crew to perform functions which they are required to perform aboard ship in the course of their designated duties⁵,

is guilty of an offence punishable, on summary conviction, by a fine not exceeding the statutory maximum⁶, or, on indictment, by a fine, or (in the case of an individual) by imprisonment not exceeding six months (or both)⁷.

Any master who contravenes his duty to carry out an obligation designated to him under head (2) above⁸, or the duty mentioned under head (3) above (which applies to him and to the company equally)⁹ is guilty of an offence punishable, on summary conviction, by a fine not exceeding the statutory maximum, or on indictment by a fine, or by imprisonment not exceeding six months (or both)¹⁰; and any member of the crew who contravenes his duty to carry out an obligation designated to him under head (2) above¹¹ is guilty of an offence punishable, on summary conviction, by a fine not exceeding level 3 on the standard scale¹².

In any proceedings for such an offence¹³ consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it is for the accused to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement¹⁴; but it is a defence for a person charged with any such offence¹⁵ to prove that he took all reasonable steps to avoid commission of the offence¹⁶.

In any case where it is found in relation to a ship that there is a contravention of these requirements¹⁷, the ship may be detained¹⁸.

1 As to the meaning of 'company' for these purposes see PARA 497 note 2.

2 I.e. any company which contravenes the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 4(2) (see PARA 497): see reg 17(1) (amended by SI 2002/2125).

3 I.e. any company which contravenes the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 4(4) (see PARA 497): see reg 17(1) (as amended: see note 2).

4 As to the meaning of 'STCW Convention' see PARA 497 note 2.

5 Is any company which contravenes the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 14 (see PARA 497): see reg 17(1) (as amended: see note 2).

6 As to the meaning of 'statutory maximum' see PARA 1099.

7 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17(1) (as amended: see note 2).

8 Is any master who contravenes the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 4(6) (see PARA 497): see reg 17(2) (amended by SI 1997/1911; SI 2002/2125).

9 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 14; and PARA 497.

10 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17(2) (as amended: see note 8).

11 Is any member of the crew who contravenes the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 4(6) (see PARA 497): see reg 17(3).

12 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17(3). As to the meaning of 'standard scale' see PARA 1099.

13 Is an offence under the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320: see reg 17(10).

14 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17(10).

15 Is an offence under the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320: see reg 17(9).

16 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17(9).

17 Is, in relation to a ship which is a United Kingdom ship, that there is any contravention of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320 (see PARA 497) or, in relation to a ship which is not a United Kingdom ship, a failure to correct a deficiency after notification to the master by an authorised person under reg 15 (see PARA 497 note 14), and there is in consequence a danger to persons, property or the environment: see reg 16(1) (amended by SI 1997/1911).

18 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 16(1) (as amended: see note 17). The Merchant Shipping Act 1995 s 284 (enforcing detention of ships) (see PARA 1253) applies in relation to the ship, subject to the modification that, for the words 'this Act' wherever they appear, there are to be substituted 'the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320': see reg 16(1) (as so amended). The Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, regs 10-12 (right of appeal, arbitration and compensation) (see PARA 700) apply in relation to a detention order under the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, as they apply to a detention order under the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128: Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 16(2).

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1132. Failure to make watchkeeping arrangements.

A master of any sea-going ship which is a United Kingdom ship (wherever it is)¹, and any other ship when in United Kingdom waters (with certain exceptions)², who contravenes the requirement to make navigational and engineering watchkeeping arrangements³ is guilty of an offence punishable, on summary conviction, by a fine not exceeding the statutory maximum⁴, or on indictment by a fine, or by imprisonment not exceeding six months (or both)⁵.

Any chief engineer who contravenes the requirement to make proper engineering watchkeeping arrangements⁶ is guilty of an offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale⁷.

It is a defence for a person charged with any such offence⁸ to prove that he took all reasonable steps to avoid commission of the offence⁹.

In any case where it is found in relation to a ship that there is a contravention of these requirements¹⁰, the ship may be detained¹¹.

1 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 3(a); and PARA 635.

2 See the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 3(b); and PARA 635.

3 I.e. any master who contravenes the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 11, 12, or 13 (see PARA 635): see reg 17(2) (amended by SI 1997/1911; SI 2002/2125).

4 As to the meaning of 'statutory maximum' see PARA 1099.

5 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17(2) (as amended: see note 3).

6 I.e. any chief engineer who contravenes the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 11 (see PARA 635): see reg 17(4).

7 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17(4). As to the meaning of 'standard scale' see PARA 1099.

8 I.e. an offence under the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320: see reg 17(9).

9 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17(9).

10 I.e. in relation to a ship which is a United Kingdom ship, that there is any contravention of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, or, in relation to a ship which is not a United Kingdom ship, that there is any contravention of reg 11, 12, or 13 (see PARA 635) or a failure to correct a deficiency after notification to the master by an authorised person under reg 15 (see PARA 635 note 3), and there is in consequence a danger to persons, property or the environment: see reg 16(1) (amended by SI 1997/1911).

11 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 16(1) (as amended: see note 10). The Merchant Shipping Act 1995 s 284 (enforcing detention of ships) (see PARA 1253) applies in relation to the ship, subject to the modification that, for the words 'this Act' wherever they

appear, there are to be substituted 'the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320': see reg 16(1) (as so amended). The Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, regs 10-12 (right of appeal, arbitration and compensation) (see PARA 700) apply in relation to a detention order under the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, as they apply to a detention order under the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128: Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 16(2).

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1133. Contravention of requirement for a safe manning document.

Any company¹ which contravenes its duty:

1328 (1) to ensure that, in relation to every ship² of 500 gross tons or more, a safe manning document³ is in force and is kept on board and that the manning of the ship is maintained at all times to at least the levels specified therein⁴; or

1329 (2) when applying for a safe manning document, to submit to the Maritime and Coastguard Agency⁵ proposals as to the numbers and grade of personnel it considers should be carried so that the ship would be safely manned if it proceeded to sea on any intended voyages (and to maintain the currency of the information so provided)⁶,

is guilty of an offence punishable, on summary conviction, by a fine not exceeding the statutory maximum⁷, or on indictment by a fine, or (in the case of an individual) by imprisonment not exceeding six months (or both)⁸.

Any master who fails to ensure that the ship does not proceed to sea unless there is on board a valid safe manning document issued in respect of the ship and that the manning of the ship complies with that document⁹ is guilty of an offence punishable, on summary conviction, by a fine not exceeding the statutory maximum, or on indictment by a fine, or by imprisonment not exceeding six months (or both)¹⁰.

In any proceedings for such an offence¹¹ consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it is for the accused to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement¹²; but it is a defence for a person charged with any such offence¹³ to prove that he took all reasonable steps to avoid commission of the offence¹⁴.

In any case where it is found in relation to a ship that there is a contravention of these requirements¹⁵, the ship may be detained¹⁶.

1 As to the meaning of 'company' for these purposes see PARA 497 note 2.

2 As to the ships to which the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, apply see PARA 634 note 2.

3 As to the meaning of 'safe manning document' see PARA 634 note 4.

4 I.e. any company which contravenes the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 5(1) (see PARA 634): see reg 17(1) (amended by SI 2002/2125).

5 As to the Maritime and Coastguard Agency see PARA 56.

6 I.e. any company which contravenes the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 5(3) (see PARA 634): see reg 17(1) (as amended: see note 4).

7 As to the meaning of 'statutory maximum' see PARA 1099.

8 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17(1) (as amended: see note 4).

9 Ie any master who contravenes the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 5(2) (see PARA 634): see reg 17(2) (amended by SI 1997/1911; SI 2002/2125).

10 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17(2) (as amended: see note 9).

11 Ie an offence under the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320: see reg 17(10).

12 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17(10).

13 Ie an offence under the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320: see reg 17(9).

14 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 17(9).

15 Ie, in relation to a ship which is a United Kingdom ship, that there is any contravention of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320 (see PARA 634) or, in relation to a ship which is not a United Kingdom ship, any contravention of reg 5 (see PARA 634) or a failure to correct a deficiency after notification to the master by an authorised person under reg 15 (see PARA 634 note 9), and there is in consequence a danger to persons, property or the environment: see reg 16(1) (amended by SI 1997/1911).

16 Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 16(1) (as amended: see note 15). The Merchant Shipping Act 1995 s 284 (enforcing detention of ships) (see PARA 1253) applies in relation to the ship, subject to the modification that, for the words 'this Act' wherever they appear, there are to be substituted 'the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320': see reg 16(1) (as so amended). The Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, regs 10-12 (right of appeal, arbitration and compensation) (see PARA 700) apply in relation to a detention order under the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, as they apply to a detention order under the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128: Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997, SI 1997/1320, reg 16(2).

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1134. Contravention of requirement to provide personal protective equipment.

Any contravention by an employer of the provisions relating to personal protective equipment¹ that govern his duty to ensure:

- 1330 (1) that the personal protective equipment required to be used is provided, and that such personal protective equipment is suitable²;
- 1331 (2) that an assessment is made to identify those circumstances where risk to the health and safety of individual workers at work cannot be avoided or reduced by other means, and to identify the characteristics required of personal protective equipment in order to provide protection to workers from that risk³;
- 1332 (3) that personal protective equipment is provided to a worker for his individual use, that appropriate instructions for the proper use and maintenance of any such personal protective equipment is readily available to any worker required to use that equipment, and that that personal protective equipment is properly stored and maintained, and is regularly inspected and, where appropriate, checked that it is in satisfactory working order⁴; or
- 1333 (4) that workers are provided with adequate and appropriate information, training and instruction⁵,

is an offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale⁶.

Any contravention by an employer of his duty to ensure that personal protective equipment is used as instructed⁷, or by a worker of his obligation to use such equipment which has been duly provided to him and to use it as instructed⁸, is an offence punishable, on summary conviction, by a fine not exceeding level 2 on the standard scale⁹.

A relevant inspector¹⁰ may inspect any United Kingdom ship¹¹ and if he is satisfied that there has been a failure to comply in relation to that ship¹² may detain the ship until the health and safety of all workers and other persons aboard ship is secured, but he must not in the exercise of these powers detain or delay the ship unreasonably¹³. Such an inspector may inspect and detain or exercise other measures in respect of any ship which is not a United Kingdom ship when the ship is in a United Kingdom port¹⁴.

¹ See generally the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205; and PARA 639. As to the application of those regulations see PARA 639 note 2. As to the meaning of 'personal protective equipment' see PARA 639 note 1.

² I.e. any contravention of the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 6 (see PARA 639): see reg 11(1).

³ I.e. any contravention of the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 7 (see PARA 639): see reg 11(1).

⁴ I.e. any contravention of the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 8 (see PARA 639): see reg 11(1).

5 le any contravention of the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 9 (see PARA 639): see reg 11(1).

6 Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 11(1). As to offences by bodies corporate see reg 12. In any proceedings for an offence under any of the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it is for the defendant to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement: reg 13. As to the meaning of 'standard scale' see PARA 1099.

7 le any contravention of the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 10(1) (see PARA 639): see reg 11(2).

8 le any contravention of the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 10(2) (see PARA 639): see reg 11(2).

9 Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 11(2). See note 6.

10 le a person mentioned in the Merchant Shipping Act 1995 s 258(1)(a), (b) or (c) (powers to inspect ships and their equipment, etc) (see PARA 48): see the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 2(2).

11 As to the meaning of 'United Kingdom ship' see PARA 639 note 2.

12 le a failure to comply with the requirements of the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205 (see PARA 639): see reg 14.

13 Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 14. Where a ship is liable to be detained under the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, the Merchant Shipping Act 1995 s 284(1)-(5), (8) (enforcing detention of ships) (see PARA 1253) has effect in relation to the ship, subject to modifications: see the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 16. The Merchant Shipping Act 1995 ss 96, 97 (arbitration and compensation in connection with detention notices) (see PARAS 1205, 1206) apply in relation to a detention notice or order under the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, as they apply in relation to a detention notice under the Merchant Shipping Act 1995 s 95(3) (power to detain dangerously unsafe ship) (see PARA 1204) but with modifications: see the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 17. The provisions of reg 15 (see the text and note 14) and regs 16, 17 apply to ships other than United Kingdom ships which are in United Kingdom waters: see reg 3(2).

14 See the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205, reg 15. See note 13.

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1135. Contravention of regulations governing masters and crew of vessels sailing in local waters.

If a person serving as qualified master of a vessel, being the holder of either a boatmaster's licence¹, a boatmaster's certificate², or a Rhine navigation licence³, fails to notify the Secretary of State⁴ in writing of the fact that he is suffering from a relevant medical condition which he has not previously disclosed⁵, or if the owner of a vessel causes or permits it to begin a voyage when the person serving as its master is a person who is contravening this requirement⁶, he is guilty of an offence and is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale⁷. It is a defence for a person charged with such an offence⁸ to prove that he took all reasonable steps to avoid commission of the offence⁹. Where a person (a 'relevant inspector')¹⁰ is satisfied that such an offence is being committed (either by a person¹¹ or by a body corporate, a partnership or an unincorporated association¹²) in relation to any vessel, the vessel is liable to be detained¹³.

If a person operating on inland waterways and on some short coastal voyages contravenes a requirement to comply with the self-employed master's working hours code¹⁴, he is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale¹⁵. It is a defence for a person charged with such an offence¹⁶ to prove that there was an unavoidable delay in the completion of a voyage arising out of circumstances which he could not reasonably have foreseen¹⁷.

If a vessel proceeds on a voyage in contravention of the requirement for the Secretary of State to approve the crewing of local passenger ships¹⁸, the owner and master are each guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale¹⁹. It is a defence to such a charge²⁰ that the person charged took all reasonable steps to avoid commission of the offence²¹. Where a person (a 'relevant inspector')²² is satisfied that such an offence is being committed²³ in relation to any vessel, the vessel is liable to be detained²⁴.

1 See the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 12; and PARA 499.

2 See the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 18; and PARA 499.

3 See the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 20; and PARA 499.

4 As to the Secretary of State see PARA 38.

5 Ie if he contravenes the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 12, 18 or 20 (see PARA 499): see reg 24(1).

6 Ie when the person serving as the vessel's master is a person who contravenes the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 12, 18 or 20 (see PARA 499): see reg 24(2).

7 Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 24(1), (2). As to the meaning of 'standard scale' see PARA 1099. As to offences under reg 24 committed by a body corporate, a partnership or an unincorporated association (other than a partnership) see reg 25.

8 *Ie* an offence under the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 24 (see the text and notes 1-7): see reg 24(4).

9 Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 24(4).

10 *Ie* a person mentioned in the Merchant Shipping Act 1995 s 258(1)(a), (b) or (c) (powers to inspect ships and their equipment, etc) (see PARA 48): see the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 26(1).

11 *Ie* under the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 24 (see the text and notes 1-7): see reg 26(1).

12 *Ie* under the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 25 (see note 7): see reg 26(1).

13 See the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 26(1). Where a vessel is liable to be detained under reg 26(1), the relevant inspector detaining it must serve on the master of the vessel a detention notice which states that the relevant inspector is of the opinion that an offence under reg 24 (see the text and notes 1-7) or reg 25 (see note 7) has been committed, specifies the reasons for that opinion, and prohibits the vessel from commencing a voyage until a relevant inspector is satisfied it can do so in circumstances where no such offence is committed: reg 26(2). The Merchant Shipping Act 1995 ss 96, 97 (arbitration and compensation in connection with detention notices) (see PARAS 1205, 1206) apply in relation to a detention notice under the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 26(2) as they apply in relation to a detention notice under the Merchant Shipping Act 1995 s 95 (power to detain dangerously unsafe ship) (see PARA 1204) but with modifications: see the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 26(3). Where a vessel is liable to be detained under reg 26, the Merchant Shipping Act 1995 s 284(1)-(6), (8) (enforcing detention of ships) (see PARA 1253) has effect in relation to the ship, subject to modifications: see the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 26(4).

14 *Ie* a requirement of the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, Pt 3 (regs 27-30) (see PARA 499): see reg 30(1).

15 Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 30(1).

16 *Ie* an offence under the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 30(1) (see the text and notes 14-15): see reg 30(2).

17 Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 30(2).

18 *Ie* in contravention of the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224, reg 4 or reg 5 (see PARA 499): see reg 6(1).

19 Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224, reg 6(1).

20 *Ie* under the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224, reg 6 (see the text and notes 18-19): see reg 6(2).

21 Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224, reg 6(2).

22 *Ie* a person mentioned in the Merchant Shipping Act 1995 s 258(1)(a), (b) or (c) (powers to inspect ships and their equipment, etc) (see PARA 48): see the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224, reg 7(1).

23 le under the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224, reg 6 (see the text and notes 18-21): see reg 7(1).

24 See the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224, reg 7(1). Where a vessel is liable to be detained under reg 7(1), the relevant inspector detaining it must serve on the master of the vessel a detention notice which states that the relevant inspector is of the opinion that an offence under reg 6 (see the text and notes 18-21) has been committed, specifies the reasons for that opinion, and prohibits the vessel from commencing a voyage until a relevant inspector is satisfied it can do so in circumstances where no such offence is committed: reg 7(2). The Merchant Shipping Act 1995 ss 96, 97 (arbitration and compensation in connection with detention notices) (see PARAS 1205, 1206) apply in relation to a detention notice under the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224, reg 7(2) as they apply in relation to a detention notice under the Merchant Shipping Act 1995 s 95 (power to detain dangerously unsafe ship) (see PARA 1204) but with modifications: see the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224, reg 7(3). Where a vessel is liable to be detained under reg 7, the Merchant Shipping Act 1995 s 284 (enforcing detention of ships) (see PARA 1253) has effect in relation to the ship, subject to modifications: see the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224, reg 7(4).

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1136. Prohibition on a ship going to sea undermanned.

If a ship¹ goes to sea or attempts to go to sea² without carrying such officers and other seamen³ as it is required to carry⁴, the owner or master⁵ is liable⁶, on conviction on indictment, to a fine or, on summary conviction, to a fine not exceeding the statutory maximum⁷; and the ship, if in the United Kingdom⁸, may be detained⁹.

1 Is a ship to which the Merchant Shipping Act 1995 s 49 applies: see s 49(1). As to the meaning of 'ship' see PARA 229. As to the application of s 49 see PARAS 423, 489. The Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, extend a part of their provisions, and the provisions of the Merchant Shipping Act 1995 s 49, in so far as they have not already been so extended, to specified classes of non-United Kingdom ships which are passenger craft operating on inland waterways or on some short coastal voyages: see PARA 499.

2 As to the meaning of references to 'going to sea' for these purposes see PARA 450 note 13. In its application to ships which are not sea-going ships, the Merchant Shipping Act 1995 s 49 has effect as if for the words 'goes to sea or attempts to go to sea' there were substituted the words 'goes on a voyage or excursion or attempts to do so' and the words 'if in the United Kingdom' were omitted: s 49(2).

3 As to the meaning of 'seaman' see PARA 424.

4 Is under the Merchant Shipping Act 1995 s 47 (see PARA 490): see s 49(1). For the purposes of s 49, a person does not contravene the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 8 (see PARA 499) (masters of certain classes of ship engaged on voyages in specified local waters to be qualified appropriately) if certain conditions are met: see reg 24(3).

As to the powers of inspectors appointed under the Merchant Shipping Act 1995 s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 49 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 49 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

5 As to the meaning of 'master' see PARA 424.

6 Is subject to the Merchant Shipping Act 1995 s 48 (power to exempt from manning requirements) (see PARA 491): see s 49(1). As to the power to grant exemptions with respect to fishing vessels see PARA 425.

7 Merchant Shipping Act 1995 s 49(1). As to the meaning of 'statutory maximum' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

8 As to the meaning of 'United Kingdom' see PARA 17 note 3.

9 Merchant Shipping Act 1995 s 49(1). As to enforcing the detention of a ship see PARA 1253.

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1137. Contravention of provisions relating to the employment of young persons on ships.

Any contravention of the provisions relating to the employment of young persons on ships¹ is an offence punishable, on summary conviction, by a fine not exceeding level 3 on the standard scale².

Where a body corporate is guilty of an offence under any of those provisions³ and that offence is proved to have been committed with the consent or connivance of (or to have been attributable to any neglect on the part of) any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly⁴. Where the affairs of a body corporate are managed by its members, this provision⁵ applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate⁶.

In any proceedings for any such offence⁷ consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it is for the defendant to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement⁸.

1 Ie any contravention of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411 (as to which see PARA 504): see reg 10. As to the meaning of 'young person' in relation to employment on a sea-going United Kingdom ship see PARA 504 note 1.

2 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 10. As to the meaning of 'standard scale' see PARA 1099.

3 Ie any of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411 (as to which see PARA 504): see reg 11(1).

4 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 11(1).

5 Ie the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 11(1) (see the text and notes 3-4): see reg 11(2).

6 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 11(2).

7 Ie an offence under any of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411 (as to which see PARA 504): see reg 12.

8 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, SI 1998/2411, reg 12.

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1138. Failure to produce certificates and other documents of qualification.

Any person serving or engaged to serve in any ship¹ and holding any certificate or other document which is evidence that he is duly qualified² must on demand produce it to any superintendent³, surveyor of ships⁴ or proper officer⁵ and, if he is not himself the master⁶, to the master of the ship⁷. If without reasonable excuse a person fails to comply with this requirement⁸, he is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale⁹.

Any person serving or engaged to serve in a United Kingdom fishing vessel¹⁰ and holding any certificate or other document which is evidence that he is duly qualified¹¹ must on demand produce it to any person who is a British sea-fishery officer for the purposes of the Sea Fisheries Acts¹². If a person fails without reasonable excuse to produce on demand any such certificate or other document, he is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale¹³.

1 I.e. any ship to which the Merchant Shipping Act 1995 s 50 applies: see s 50(1); and PARA 501. As to the meaning of 'ship' see PARA 229.

2 I.e. qualified for the purposes of the Merchant Shipping Act 1995 s 47 (see PARA 490): see s 50(1); and PARA 501.

3 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

4 As to the meaning of 'surveyor of ships' see PARA 46 note 13. As to the appointment of surveyors see PARA 46.

5 As to the meaning of 'proper officer' see PARA 48 note 11.

6 As to the meaning of 'master' see PARA 424.

7 See the Merchant Shipping Act 1995 s 50(1); and PARA 501. As to the power to grant exemptions with respect to fishing vessels see PARA 425.

8 I.e. fails to comply with the Merchant Shipping Act 1995 s 50(1) (see the text and notes 1-7): see s 50(2).

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 50 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 50 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

9 Merchant Shipping Act 1995 s 50(2). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

10 As to the meaning of 'fishing vessel' see PARA 230 note 9; and as to the meaning of 'United Kingdom fishing vessel' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3. As to crew agreements relating to fishing vessels see PARA 458.

11 I.e. qualified for the purposes of the Merchant Shipping Act 1995 s 47 (see PARA 490): see s 116(1); and PARA 502.

12 See the Merchant Shipping Act 1995 s 116(1); and PARA 502. As to who are British sea-fishery officers for the purposes of the Sea Fisheries Acts see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 963.

13 Merchant Shipping Act 1995 s 116(2).

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1139. Going to sea where crew's knowledge of English is insufficient.

Where, in the opinion of a superintendent¹ or proper officer², the crew of a ship³ consists of or includes persons who may not understand orders given to them in the course of their duty because of their insufficient knowledge of English and the absence of adequate arrangements for transmitting the orders in a language of which they have sufficient knowledge⁴, then:

- 1334 (1) if the superintendent or proper officer has informed the master⁵ of that opinion, the ship must not go to sea⁶; and
- 1335 (2) if the ship is in the United Kingdom⁷, it may be detained⁸.

If a ship goes to sea or attempts to go to sea in contravention of these restrictions⁹, the owner or master is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale¹⁰.

1 As to the meaning of 'superintendent' see PARA 60 note 1. As to the appointment of superintendents see PARA 60.

2 As to the meaning of 'proper officer' see PARA 48 note 11.

3 In any ship to which the Merchant Shipping Act 1995 s 51 applies: see s 51(1); and PARA 492. As to the meaning of 'ship' see PARA 229. As to the application of s 51 see PARAS 423, 489.

4 See the Merchant Shipping Act 1995 s 51(1); and PARA 492. As to the power to grant exemptions with respect to fishing vessels see PARA 425.

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 51 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 51 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

5 As to the meaning of 'master' see PARA 424.

6 See the Merchant Shipping Act 1995 s 51(1)(a); and PARA 492. As to the meaning of references to 'going to sea' for these purposes see PARA 450 note 13.

7 As to the meaning of 'United Kingdom' see PARA 17 note 3.

8 Merchant Shipping Act 1995 s 51(1)(b); and PARA 492. As to enforcing the detention of a ship see PARA 1253.

9 In contravention of the Merchant Shipping Act 1995 s 51(1) (see the text and notes 1-8): see s 51(2).

10 Merchant Shipping Act 1995 s 51(2). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1140. Unqualified persons going to sea as qualified officers or seamen.

If a person goes to sea¹ as a qualified² officer or seaman³ of any description without being such a qualified officer or seaman⁴, he is liable, on conviction on indictment, to a fine or, on summary conviction, to a fine not exceeding the statutory maximum⁵.

1 As to the meaning of references to 'going to sea' for these purposes see PARA 450 note 13.

2 For these purposes, 'qualified' means qualified for the purposes of the Merchant Shipping Act 1995 s 47 (see PARA 490): s 52(2).

3 As to the meaning of 'seaman' see PARA 424.

4 As to the powers of inspectors appointed under the Merchant Shipping Act 1995 s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 52 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 52 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

5 Merchant Shipping Act 1995 s 52(1). As to the meaning of 'statutory maximum' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

As to the application of s 52 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425. The Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, extend a part of their provisions, and the provisions of the Merchant Shipping Act 1995 s 52, in so far as they have not already been so extended, to specified classes of non-United Kingdom ships which are passenger craft operating on inland waterways or on some short coastal voyages: see PARA 499. However, for the purposes of the Merchant Shipping Act 1995 s 52, a person does not contravene the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223, reg 8 (see PARA 499) (masters of certain classes of ship engaged on voyages in specified local waters to be qualified appropriately) if certain conditions are met: see reg 24(3).

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1141. Improperly obtaining special certificates of competence.

If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a document which may be issued under the provisions governing special certificates of competence¹, he is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale².

1 Is issued under the Merchant Shipping Act 1995 s 54 (see PARA 494); see s 54(2). The text refers to the power of the Secretary of State to issue and record documents certifying the attainment of any standard of competence relating to ships or their operation, notwithstanding that the standard is not among those prescribed or otherwise specified under s 47(1)(b) (see PARA 490); see s 54(1); and PARA 494. As to the meaning of 'ship' see PARA 229. As to the Secretary of State see PARA 38. As to the application of s 54 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 54 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 54 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

2 Merchant Shipping Act 1995 s 54(2). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1142. Failure to deliver cancelled or suspended seaman's certificate.

If a person fails to deliver a cancelled or suspended certificate as required following an inquiry into fitness or conduct¹, he is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale².

If a person fails to deliver a certificate as required³ after it has been cancelled or suspended on account of the holder's unfitness to discharge his duties, or negligence in the discharge of his duties, so that he caused or contributed to an accident⁴, he is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale⁵.

1 Ie as required under the Merchant Shipping Act 1995 s 61 (see PARA 511), s 62 (see PARA 507) or s 63 (see PARA 517): see s 66.

2 Merchant Shipping Act 1995 s 66. As to the application of s 66 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425. As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

3 Ie as required under the Merchant Shipping Act 1995 s 268(5) (see PARA 856): see s 268(6).

4 As to the meaning of 'accident' see PARA 856 note 1.

5 Merchant Shipping Act 1995 s 268(6).

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1143. Improper destruction, mutilation or alteration of official log book.

If a person intentionally destroys or mutilates or renders illegible any entry in an official log book¹, he is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale².

1 As to the requirement to keep official log books see PARA 531 et seq.

2 Merchant Shipping Act 1995 s 77(6). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

As to the application of s 77 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

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1144. Offences relating to copies of lists of crew.

A copy of every list of crew¹, including all changes in it notified to the owner, must be maintained by the owner of the ship² at an address in the United Kingdom³; and a person who fails to do so commits an offence and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁴.

The master must, as soon as practicable and in any event within three days of any change being made in the list of crew, notify the change to the owner of the ship⁵; and a master who fails to do so commits an offence and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁶.

When any person having in his possession the copy of a list of crew⁷ has reason to believe that the ship to which it relates has been lost or abandoned, he must immediately deliver the copy of the list to a superintendent⁸. A person who fails to do so commits an offence and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁹.

A person having in his possession a copy of a list of crew¹⁰ must produce it on demand to a superintendent¹¹; and a person who fails to so comply commits an offence and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale¹².

1 As to the requirement to keep a list of the crew see PARA 534.

2 As to the meaning of 'owner of the ship' for these purposes see PARA 539 note 2; and as to the meaning of 'ship' for these purposes see PARA 452 note 2.

3 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 15(1); and PARA 539. As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(2), (3). As to the meaning of 'standard scale' see PARA 1099.

5 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 15(2); and PARA 539.

6 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(1), (3).

7 The which is required to be maintained under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 15 (see the text and notes 1-3, 5): see reg 16.

8 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 16; and PARA 539.

9 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(2), (3).

10 The which is required to be maintained under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 15 (see the text and notes 1-3, 5): see reg 17; and PARA 539.

11 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 17; and PARA 539.

12 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(2), (3).

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1145. Failure to deliver list of crew on demand to Registrar General.

The owner¹ must, on demand, deliver to the Registrar General of Shipping and Seamen² within 28 days of such demand being made a list of the crew on board the ship at a date specified by the Registrar General of Shipping and Seamen³. A person who fails to comply with an obligation so imposed on him⁴ commits an offence⁵ and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁶.

1 As to the meaning of 'owner of the ship' for these purposes see PARA 539 note 2; and as to the meaning of 'ship' see PARA 452 note 2.

2 As to the Registrar General of Shipping and Seamen see PARA 61.

3 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 18; and PARA 540.

4 Lie by or under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 18 (see the text and notes 1-3): see reg 22(2).

5 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(2).

6 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(3).

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1146. Failure to deliver expired or changed list of crew.

The master must, within three days after a list of crew¹ has ceased to be in force (or, if it is not practicable within that period, as soon as practicable thereafter) deliver the list to a superintendent or proper officer for the place where the ship is when the list of crew ceases to be in force². A master who fails to comply with an obligation so imposed on him³ commits an offence⁴ and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁵.

Where the crew agreement covers an indefinite period, the owner must deliver a list every six months after the crew agreement is opened, showing all changes that have occurred since the list was last submitted, either to the superintendent at a port in the United Kingdom⁶ where the ship was when the six-month period expired or (if the ship was out of the United Kingdom at that time) to the Registrar General of Shipping and Seamen⁷, within seven days of the expiry of each period of six months⁸. A person who fails to comply with an obligation so imposed on him⁹ commits an offence¹⁰ and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale¹¹.

1 le other than one relating to a ship of less than 25 gross tons or to a ship belonging to a general lighthouse authority: see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 20(1); and PARA 542. As to the meaning of 'ship' for these purposes see PARA 452 note 2; and as to the meaning of references to the gross tonnage of a ship see PARA 452 note 5. As to general lighthouse authorities see PARA 1068.

2 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 20(1); and PARA 542.

3 le by or under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 20(1) (see the text and notes 1-2): see reg 22(1).

4 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(1).

5 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(3). As to the meaning of 'standard scale' see PARA 1099.

6 As to the meaning of 'United Kingdom' see PARA 17 note 3.

7 As to the Registrar General of Shipping and Seamen see PARA 61.

8 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 20(2); and PARA 542.

9 le by or under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 20(2) (see the text and notes 6-8): see reg 22(2).

10 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(2).

11 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(3).

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1147. Failure to produce lists of crew on demand to officials.

A master must, on demand, produce to the Registrar General of Shipping and Seamen¹, a superintendent or proper officer, a surveyor of ships in the course of any inspection of the ship² or an officer of revenue and customs³ the list of crew required to be maintained in the ship⁴.

A master who fails to comply with an obligation so imposed on him⁵ commits an offence⁶ and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁷.

1 As to the Registrar General of Shipping and Seamen see PARA 61.

2 He in pursuance of his functions under the Merchant Shipping Act 1995 s 256 (see PARA 46) or under s 258 (see PARA 48): see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 21; Interpretation Act 1978 s 17(2)(b); and PARA 543.

3 As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

4 See the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 21; Interpretation Act 1978 s 17(2)(b); and PARA 543. As to the requirement to keep a list of the crew see PARA 534.

5 He by or under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 21 (see the text and notes 1-4): see reg 22(1).

6 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(1).

7 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, SI 1991/2144, reg 22(3). As to the meaning of 'standard scale' see PARA 1099.

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1148. Failure to produce British seaman's card on demand to officials.

A person who fails to produce his British seaman's card¹ to the Registrar General of Shipping and Seamen² or a superintendent, a proper officer, his employer or the master of his ship, on demand (or within such period as the person requiring its production may allow)³ commits an offence⁴ and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁵; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁶.

1 As to British seamen's cards see PARA 544 et seq.

2 As to the Registrar General of Shipping and Seamen see PARA 61.

3 I.e. in pursuance of a requirement made under the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 10 (see PARA 548): see reg 10(2).

4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 10(2).

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(1). As to the meaning of 'standard scale' see PARA 1099.

6 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2).

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1149. Failure to surrender British seaman's card when required.

A person who fails to comply with the requirement¹ to surrender a British seaman's card² to the Registrar General of Shipping and Seamen³ or to a superintendent⁴ commits an offence⁵ and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁶; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁷.

1 Ie the requirements of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 11 (see PARA 549): see reg 11(2).

2 As to British seamen's cards see PARA 544 et seq.

3 As to the Registrar General of Shipping and Seamen see PARA 61.

4 Ie either forthwith, upon his ceasing to be a British seaman or upon the card being defaced, and on demand, after he has ceased to have the right of abode: see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 11(1); and PARA 549.

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 11(2).

6 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(1). As to the meaning of 'standard scale' see PARA 1099.

7 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2).

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1150. Failure to deliver British seaman's card.

Where any person comes into possession of a British seaman's card¹ of which he is not the holder² and that person fails to comply with the requirement to deliver that card to the Registrar General of Shipping and Seamen³ or to a superintendent⁴, that person commits an offence⁵ and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁶; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁷.

1 As to British seamen's cards see PARA 544 et seq.

2 As to the meaning of 'holder' see PARA 545 note 14.

3 As to the Registrar General of Shipping and Seamen see PARA 61.

4 I.e. where any person fails to comply with the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 12 (see PARA 550): see reg 12(2).

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 12(2).

6 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(1). As to the meaning of 'standard scale' see PARA 1099.

7 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2).

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1151. Employment when disentitled to discharge book.

As from a day to be appointed¹, a person who, in the United Kingdom² or elsewhere³:

1336 (1) obtains employment as a seaman⁴ on board a United Kingdom ship⁵ and does so when he is disentitled to a discharge book⁶; or

1337 (2) employs as such a seaman a person who he knows or has reason to suspect is so disentitled⁷,

is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding the statutory maximum⁸.

1 The Merchant Shipping Act 1995 s 80(4) (see the text and notes 2-8) does not have effect until the Secretary of State by order appoints a day for s 80(4) to come into force: see s 314(3), Sch 14 para 5(1), (2); and PARA 16. At the date at which this volume states the law, no such day had been appointed. As to the application of s 80 generally see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425. As to the Secretary of State see PARA 38.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping Act 1995 s 80(4) (not yet in force). See note 1.

4 As to the meaning of 'seaman' see PARA 424.

5 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229.

6 Merchant Shipping Act 1995 s 80(4)(a) (not yet in force). The text refers to disentitlement by virtue of regulations made under s 80(2)(a) (not yet in force) (see PARA 551): see s 80(4)(a) (not yet in force). See note 1.

7 Merchant Shipping Act 1995 s 80(4)(b) (not yet in force). See note 1.

8 Merchant Shipping Act 1995 s 80(4) (not yet in force). See note 1. As to the meaning of 'statutory maximum' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1152. Failure to make proper application for discharge book when required.

Any person required¹ to apply for a discharge book² who fails to make an application for a discharge book in accordance with the statutory provisions³ commits an offence⁴ and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁵; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁶.

1 He is under the provisions of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 15(1) (see PARA 552): see reg 17(2).

2 As to applications for a discharge book see PARA 552.

3 He is in accordance with the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408 (see PARA 552): see reg 17(2).

4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 17(2).

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(1). As to the meaning of 'standard scale' see PARA 1099.

6 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2).

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1153. Failure to produce discharge book on demand.

The holder¹ of a discharge book² who fails to produce it on demand when required to do so³ commits an offence⁴ and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁵; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁶.

1 As to the meaning of 'holder' see PARA 545 note 14.

2 As to discharge books see PARA 551 et seq.

3 Ie in accordance with the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 22 (see PARA 554): see reg 22(2).

4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 22(2).

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(1). As to the meaning of 'standard scale' see PARA 1099.

6 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2).

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1154. Failure to deliver discharge book.

Where any person, having possession of a discharge book¹, is required² to deliver it to a superintendent or proper officer or to the Registrar General of Shipping and Seamen³, and that person fails to comply with the requirement so to deliver that discharge book⁴, that person commits an offence⁵ and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁶; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁷.

1 As to discharge books see PARA 551 et seq.

2 Ie because he becomes aware that the holder has died, has been discharged from any ship, or has been left behind in any country: see the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 23(1); and PARA 555. As to the meaning of 'holder' see PARA 545 note 14.

3 As to the Registrar General of Shipping and Seamen see PARA 61.

4 Ie where any person fails to comply with requirements of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 23 (see PARA 555): see reg 23(2).

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 23(2).

6 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(1). As to the meaning of 'standard scale' see PARA 1099.

7 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2).

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1155. Failure to notify errors in seamen's documents.

Any person who fails to comply with the requirement¹ to inform the Registrar General of Shipping and Seamen² or a superintendent of any entry in a seaman's document³ which appears to the holder⁴ thereof not to be correct, commits an offence⁵ and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁶; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁷.

1 le any person who fails to comply with requirements of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 26 (see PARA 557): see reg 26(1); and PARA 557.

2 As to the Registrar General of Shipping and Seamen see PARA 61.

3 As to the meaning of 'seaman's document' for these purposes see PARA 557 note 2.

4 As to the meaning of 'holder' for these purposes see PARA 557 note 1.

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 26(2).

6 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(1). As to the meaning of 'standard scale' see PARA 1099.

7 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2).

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1156. Failure to surrender seamen's documents when required.

Any person who fails to comply with the requirement¹ to surrender a seaman's document² commits an offence³ and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁴; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁵.

1 In the requirements of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 27 (see PARA 558); see reg 27(3); and PARA 558.

2 As to the meaning of 'seaman's document' for these purposes see PARA 557 note 2.

3 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 27(3).

4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(1). As to the meaning of 'standard scale' see PARA 1099.

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2).

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1157. Making of improper marks or entries in seamen's documents.

Any person, other than a person duly authorised and duly acting¹, who makes any mark or entry upon, or erases, cancels or alters any mark or entry made upon or otherwise defaces or destroys a seaman's document² commits an offence³ and is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁴; but it is a defence for a person so charged to prove that he took all reasonable precautions to avoid the commission of the offence⁵.

1 le a person authorised by the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 5 (issue of British seamen's cards) (see PARA 546), reg 8 (validity of previously issued British seamen's cards) (see PARA 547), reg 18 (issue of discharge books) (see PARA 553), reg 20 (entries in discharge books) (see PARA 553) or reg 21 (correction of entries in discharge books) (see PARA 553), as the case may be, acting in accordance with the provisions of those regulations: see reg 28(1); and PARA 559.

2 le any person who contravenes the provisions of the Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 28 (see PARA 559): see reg 28(2); and PARA 559. As to the meaning of 'seaman's document' for these purposes see PARA 557 note 2.

3 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 28(2).

4 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(1). As to the meaning of 'standard scale' see PARA 1099.

5 Merchant Shipping (Seamen's Documents) Regulations 1987, SI 1987/408, reg 30(2).

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1158. Master's failure to deliver documents where he ceases to be master during voyage.

If a person ceases to be the master¹ of a United Kingdom ship² during a voyage of the ship, he must deliver to his successor the documents relating to the ship or its crew which are in his custody³; and if, without reasonable excuse, the master of such a ship fails to comply with this requirement⁴, he is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale⁵.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

3 See the Merchant Shipping Act 1995 s 81(1); and PARA 449. As to the application of s 81 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

4 Ie if he fails to comply with the Merchant Shipping Act 1995 s 81(1) (see PARA 449): see s 81(2).

5 Merchant Shipping Act 1995 s 81(2). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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B. CONDUCT-RELATED OFFENCES COMMITTED BY CREW

(A) GENERAL CONDUCT

1159. Conduct endangering ships, structures or individuals.

If a master or seaman¹, while on board his ship or in its immediate vicinity²:

- 1338 (1) does any act which causes or is likely to cause: (a) the loss or destruction of or serious damage to his ship or its machinery, navigational equipment or safety equipment³; or (b) the loss or destruction of or serious damage to any other ship or any structure⁴; or (c) the death of or serious injury to any person⁵; or
- 1339 (2) omits to do anything required: (a) to preserve his ship or its machinery, navigational equipment or safety equipment from being lost, destroyed or seriously damaged⁶; or (b) to preserve any person on board his ship from death or serious injury⁷; or (c) to prevent his ship from causing the loss or destruction of or serious damage to any other ship or any structure or the death of or serious injury to any person not on board his ship⁸,

and either of the specified conditions is satisfied with respect to that act or omission, he is guilty of an offence⁹. Those conditions are that the act or omission was deliberate or amounted to a breach or neglect of duty¹⁰ or that the master or seaman in question was under the influence of drink or a drug at the time of the act or omission¹¹.

If a master or seaman¹²:

- 1340 (i) discharges any of his duties, or performs any other function in relation to the operation of his ship or its machinery or equipment, in such a manner as to cause, or to be likely to cause, any such loss, destruction, death or injury as is mentioned in head (1) above¹³; or
- 1341 (ii) fails to discharge any of his duties, or to perform any such function, properly to such an extent as to cause, or to be likely to cause, any of those things¹⁴,

he is guilty of an offence¹⁵.

A person guilty of any such offence¹⁶ is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding the statutory maximum¹⁷. In proceedings for such an offence¹⁸, it is a defence to prove¹⁹:

- 1342 (A) in the case of an offence under head (1) or (2) above, where the act or omission alleged against the accused constituted a breach or neglect of duty, that the accused took all reasonable steps to discharge that duty²⁰;
- 1343 (B) in the case of an offence under head (1) or (2) above, that at the time of the act or omission alleged against the accused he was under the influence of a

drug taken by him for medical purposes and either that he took it on medical advice or that he had no reason to believe that the drug might have the influence it had²¹;

1344 (c) in the case of an offence under head (i) or (ii) above, that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence²²; or

1345 (d) in the case of an offence under any of heads (1), (2), (i) or (ii) above, that he could have avoided committing the offence only by disobeying a lawful command, or that in all the circumstances the loss, destruction, damage, death or injury in question, or, as the case may be, the likelihood of its being caused, either could not reasonably have been foreseen by the accused or could not reasonably have been avoided by him²³.

No proceedings for any such offence²⁴ may be instituted against any such person except by or with the consent of the Secretary of State²⁵ or the Director of Public Prosecutions²⁶.

1 The Merchant Shipping Act 1995 s 58 applies:

19 (1) to the master of, or any seaman employed in, a United Kingdom ship (s 58(1)(a)); and

20 (2) to the master of, or any seaman employed in, a ship which is registered under the law of any country outside the United Kingdom and is in a port in the United Kingdom or within United Kingdom waters while proceeding to or from any such port (s 58(1)(b)).

In the application of s 58 to any person falling within s 58(1)(b) (see head (2) above), s 58(2) (see the text and notes 2-9) and s 58(4) (see the text and notes 12-15) have effect as if s 58(2)(a)(i) (see head (1)(a) in the text) and s 58(2)(b)(i) (see head (2)(a) in the text) were omitted: s 58(7). As to the general application of s 58 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425. As to the meanings of 'master' and 'seaman' see PARA 424. As to the meaning of 'port' see PARA 46 note 12. As to the meaning of 'United Kingdom waters' see PARA 48 note 10; and as to the meaning of 'United Kingdom' see PARA 17 note 3. As to the meaning of 'United Kingdom ship' see PARA 230; and as to the meaning of 'ship' see PARA 229. As to whether a jet-ski is a 'ship' within the meaning of the Merchant Shipping Act 1995 s 58 see *R v Goodwin*[2005] EWCA Crim 3184, [2006] 2 All ER (Comm) 281, [2006] 1 Lloyd's Rep 432; and see *R v Goodwin*[2005] All ER (D) 286 (Dec), CA (regarding a reference to the House of Lords).

2 Merchant Shipping Act 1995 s 58(2).

3 Merchant Shipping Act 1995 s 58(2)(a)(i).

4 Merchant Shipping Act 1995 s 58(2)(a)(ii). For these purposes, 'structure' means any fixed or movable structure, of whatever description, other than a ship: s 58(8).

5 Merchant Shipping Act 1995 s 58(2)(a)(iii).

6 Merchant Shipping Act 1995 s 58(2)(b)(i).

7 Merchant Shipping Act 1995 s 58(2)(b)(ii).

8 Merchant Shipping Act 1995 s 58(2)(b)(iii).

9 Merchant Shipping Act 1995 s 58(2). This provision is subject to s 58(6) (see the text and notes 18-23) and s 58(7) (see notes 1, 24-26): see s 58(2).

10 Merchant Shipping Act 1995 s 58(3)(a). For these purposes, 'breach or neglect of duty', except in relation to a master, includes any disobedience to a lawful command; and 'duty', in relation to a master or seaman, means any duty falling to be discharged by him in his capacity as such; and, in relation to a master, includes his duty with respect to the good management of his ship and his duty with respect to the safety of operation of his ship, its machinery and equipment: s 58(8).

11 Merchant Shipping Act 1995 s 58(3)(b). As to general provisions involving shipping and alcohol- or drugs-related offences see the Railways and Transport Safety Act 2003 Pt 4 (ss 78-91); and PARA 1162 et seq.

12 In being a person to whom the Merchant Shipping Act 1995 s 58 applies (see note 1): see s 58(4).

13 Merchant Shipping Act 1995 s 58(4)(a).

14 Merchant Shipping Act 1995 s 58(4)(b).

15 Merchant Shipping Act 1995 s 58(4). This provision is subject to s 58(6) (see the text and notes 18-23) and s 58(7) (see notes 1, 24-26): see s 58(4).

16 Is an offence under the Merchant Shipping Act 1995 s 58: see s 58(5).

17 Merchant Shipping Act 1995 s 58(5). As to the meaning of 'statutory maximum' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

18 Is an offence under the Merchant Shipping Act 1995 s 58: see s 58(6).

19 Merchant Shipping Act 1995 s 58(6).

20 Merchant Shipping Act 1995 s 58(6)(a).

21 Merchant Shipping Act 1995 s 58(6)(b).

22 Merchant Shipping Act 1995 s 58(6)(c).

23 Merchant Shipping Act 1995 s 58(6)(d).

24 Is an offence under the Merchant Shipping Act 1995 s 58: see s 58(7).

25 As to the Secretary of State see PARA 38.

26 Merchant Shipping Act 1995 s 58(7). As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

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1160. Concerted disobedience and neglect of duty.

If a seaman¹ employed in a United Kingdom ship² combines with other seamen employed in that ship³:

1346 (1) to disobey lawful commands which are required to be obeyed at a time while the ship is at sea⁴;

1347 (2) to neglect any duty which is required to be disregarded at such a time⁵; or

1348 (3) to impede, at such a time, the progress of a voyage or the navigation of the ship⁶,

he is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding the statutory maximum⁷.

However, neither head (1) nor head (2) above applies to fishing vessels⁸ and persons serving in them⁹.

1 As to the meaning of 'seaman' see PARA 424.

2 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping Act 1995 s 59(1). As to the application of s 59 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

4 Merchant Shipping Act 1995 s 59(1)(a). For these purposes, a ship is treated as being at sea at any time when it is not securely moored in a safe berth: s 59(2).

5 Merchant Shipping Act 1995 s 59(1)(b).

6 Merchant Shipping Act 1995 s 59(1)(c).

7 Merchant Shipping Act 1995 s 59(1). As to the meaning of 'statutory maximum' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

8 As to the meaning of 'fishing vessel' see PARA 230 note 9.

9 Merchant Shipping Act 1995 s 119(1).

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1161. Offences related to wearing of the merchant navy uniform.

Until a day to be appointed¹, if any person, not being entitled to wear the merchant navy uniform, wears that uniform or any part thereof, or any dress having the appearance or bearing any of the distinctive marks of that uniform, he is guilty of an offence². A person guilty of such an offence is liable on summary conviction³:

1349 (1) except in a case falling within head (2) below, to a fine not exceeding level 1 on the standard scale⁴;

1350 (2) if he wears it in such a manner or under such circumstances as to be likely to bring contempt on the uniform, to a fine not exceeding level 1 on the standard scale or to imprisonment for a term not exceeding one month⁵.

If any person entitled to wear the merchant navy uniform when aboard a ship⁶ in port⁷ or on shore appears dressed partly in uniform and partly not in uniform under such circumstances as to be likely to bring contempt on the uniform, or, being entitled to wear the uniform appropriate to a particular rank or position, wears the uniform appropriate to some higher rank or position, he is liable, on summary conviction, to a fine not exceeding level 1 on the standard scale⁸.

1 The Merchant Shipping Act 1995 s 57 ceases to have effect on such day as the Secretary of State by order appoints: see s 314(3), Sch 14 para 6(1), (2). At the date at which this volume states the law, no such day had been appointed. As to the Secretary of State see PARA 38.

2 Merchant Shipping Act 1995 s 57(1). However, s 57(1) does not prevent any person from wearing any uniform or dress in the course or for the purposes of a stage play or representation, or a music-hall or circus performance if the uniform is not worn in such a manner or under such circumstances as to bring it into contempt: s 57(3). See note 1. As to the application of s 57 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

3 Merchant Shipping Act 1995 s 57(2). See note 1.

4 Merchant Shipping Act 1995 s 57(2)(a). See note 1. As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

As from a day to be appointed under the Criminal Justice Act 2003 s 336(3), the Merchant Shipping Act 1995 s 57(2)(b) is repealed by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9 and the reference in head (1) in the text to 'except in a case falling within head (2) [in the text]' is omitted: see the Merchant Shipping Act 1995 s 57(2) (a) (prospectively amended by the Criminal Justice Act 2003 Sch 37 Pt 9), the Merchant Shipping Act 1995 s 57(2)(b) (prospectively repealed by the Criminal Justice Act 2003 Sch 37 Pt 9). However, at the date at which this volume states the law, no such day had been appointed.

5 Merchant Shipping Act 1995 s 57(2)(b). See notes 1, 4.

6 As to the meaning of 'ship' see PARA 229.

7 As to the meaning of 'port' see PARA 46 note 12.

8 Merchant Shipping Act 1995 s 57(4). See note 1.

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(B) ALCOHOL AND DRUGS OFFENCES

1162. Alcohol and drugs offences applying to professional shipping staff.

Any of the following persons¹:

- 1351 (1) a professional master² of a ship³;
- 1352 (2) a professional pilot of a ship⁴; and
- 1353 (3) a professional seaman in a ship while on duty⁵,

commits an offence if his ability to carry out his duties is impaired because of drink or drugs⁶; and such a person⁷ commits an offence if the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit⁸. Where a person is charged with such an offence⁹ in respect of the effect of a drug on his ability to carry out duties on a fishing vessel¹⁰, it is a defence for him to show¹¹: (a) that he took the drug for a medicinal purpose on, and in accordance with, medical advice¹²; or (b) that he took the drug for a medicinal purpose and had no reason to believe that it would impair his ability to carry out his duties¹³.

A professional seaman¹⁴ in a ship, at a time when:

- 1354 (i) he is not on duty¹⁵; but
- 1355 (ii) in the event of an emergency, he would or might be required by the nature or terms of his engagement or employment to take action to protect the safety of passengers¹⁶,

commits an offence if his ability to take the action mentioned in head (ii) above is impaired because of drink or drugs¹⁷; and such a person¹⁸ also commits an offence if the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit¹⁹. Where a person is charged with such an offence²⁰ in respect of the effect of a drug on his ability to take action it is a defence for him to show²¹: (A) that he took the drug for a medicinal purpose on, and in accordance with, medical advice²²; or (B) that he took the drug for a medicinal purpose and had no reason to believe that it would impair his ability to take the action²³.

A person guilty of any such offence²⁴ is liable, on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine (or to both) or, on summary conviction, to a fine not exceeding the statutory maximum²⁵.

1 The persons to whom the Railways and Transport Safety Act 2003 s 78 applies (see heads (1) to (3) in the text): see s 78(1).

2 For the purposes of the Railways and Transport Safety Act 2003 s 78, a master, pilot or seaman is professional if (and only if) he acts as master, pilot or seaman in the course of a business or employment: s 78(4). As to the meanings of 'master' and 'seaman' see PARA 424; definitions applied by s 89(2)(d), (f). In Pt 4 (ss 78-91), 'pilot' has the meaning given by the Pilotage Act 1987 s 31(1) (see PARA 563); Railways and Transport Safety Act 2003 s 89(3).

3 Railways and Transport Safety Act 2003 s 78(1)(a). In Pt 4, 'ship' includes every description of vessel used in navigation; and a reference to the navigation of a vessel includes a reference to the control or direction, or participation in the control or direction, of the course of a vessel: s 89(1). Pt 4 has effect in relation to United Kingdom ships, foreign ships in United Kingdom waters, and un-registered ships in United Kingdom waters: ss 91(1), 121(d). As to the meaning of 'foreign', in relation to a ship, see PARA 19 note 2; definition applied by s 89(2)(b). As to the meaning of 'registered' for these purposes see PARA 254 note 2; definition applied by s 89(2)(e). As to the meaning of 'United Kingdom ship' see PARA 230; definition applied by s 89(2)(g). As to the meaning of 'United Kingdom waters' see PARA 48 note 10; definition applied by s 89(2)(h). As to the meaning of 'United Kingdom' see PARA 17 note 3.

Pt 4 applies also to a person in the service of the Crown (s 90(2)), except a member of Her Majesty's naval forces, military forces or air forces, within the meaning given by the Army Act 1955 s 225(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 20) while acting in the course of his duties (Railways and Transport Safety Act 2003 s 90(1)). Pt 4 does not apply to a member of a visiting force, within the meaning which that expression has in the Visiting Forces Act 1952 s 3 by virtue of s 12(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140), while acting in the course of his duties, or to a member of a civilian component of a visiting force, within that meaning, while acting in the course of his duties: Railways and Transport Safety Act 2003 s 90(4). As from a day to be appointed under the Armed Forces Act 2006 s 383(2), the reference in the Railways and Transport Safety Act 2003 s 90(1) to 'Her Majesty's naval forces, military forces or air forces, within the meaning given by the Army Act 1955 s 225(1)' is to be replaced by a reference to 'any of Her Majesty's forces, within the meaning of the Armed Forces Act 2006 (see **ARMED FORCES**): see the Railways and Transport Safety Act 2003 s 90(1) (prospectively amended by the Armed Forces Act 2006 s 378(1), Sch 16 para 198). However, at the date at which this volume states the law, no such day had been appointed.

4 Railways and Transport Safety Act 2003 s 78(1)(b).

5 Railways and Transport Safety Act 2003 s 78(1)(c).

6 Railways and Transport Safety Act 2003 s 78(2). In Pt 4, 'drug' includes any intoxicant other than alcohol: s 89(5).

7 Ie a person to whom the Railways and Transport Safety Act 2003 s 78 applies (see heads (1) to (3) in the text): see s 78(3).

8 Railways and Transport Safety Act 2003 s 78(3). The prescribed limit of alcohol for the purposes of Pt 4 is:

21 (1) in the case of breath, 35 microgrammes of alcohol in 100 millilitres (s 81(1)(a));

22 (2) in the case of blood, 80 milligrammes of alcohol in 100 millilitres (s 81(1)(b)); and

23 (3) in the case of urine, 107 milligrammes of alcohol in 100 millilitres (s 81(1)(c)).

The Secretary of State may make regulations amending s 81(1) (s 81(2)); but before making regulations under s 81(2) the Secretary of State must consult such organisations as he thinks fit (s 88(6)). Regulations under Pt 4 must be made by statutory instrument (s 88(3)) but must not be made unless a draft has been laid before and approved by resolution of each House of Parliament (s 88(4)). Such regulations may make transitional, supplemental and incidental provision, make provision generally or for specified purposes only, and make different provision for different purposes: s 88(1). As to the Secretary of State for these purposes see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 35.

9 Ie under the Railways and Transport Safety Act 2003 s 78: see s 78(5).

10 As to the meaning of 'fishing vessel' see PARA 230 note 9; definition applied by the Railways and Transport Safety Act 2003 s 89(2)(a).

11 Railways and Transport Safety Act 2003 s 78(5).

12 Railways and Transport Safety Act 2003 s 78(5)(a).

13 Railways and Transport Safety Act 2003 s 78(5)(b).

14 Ie to whom the Railways and Transport Safety Act 2003 s 79 applies (see heads (i), (ii) in the text): see s 79(1). For the purposes of s 79, a seaman is professional if (and only if) he acts as seaman in the course of a business or employment: s 79(4).

15 Railways and Transport Safety Act 2003 s 79(1)(a).

16 Railways and Transport Safety Act 2003 s 79(1)(b).

17 Railways and Transport Safety Act 2003 s 79(2).

18 Is a person to whom the Railways and Transport Safety Act 2003 s 79 applies (see heads (i), (ii) in the text): see s 79(3).

19 Railways and Transport Safety Act 2003 s 79(3).

20 Is an offence under the Railways and Transport Safety Act 2003 s 79: see s 79(5).

21 Railways and Transport Safety Act 2003 s 79(5).

22 Railways and Transport Safety Act 2003 s 79(5)(a).

23 Railways and Transport Safety Act 2003 s 79(5)(b).

24 Is an offence under the Railways and Transport Safety Act 2003 Pt 4: see s 82.

25 Railways and Transport Safety Act 2003 s 82. As to the meaning of 'statutory maximum' see PARA 1099.

In relation to an offence under Pt 4, the following provisions of the Road Traffic Act 1988 and of the Road Traffic Offenders Act 1988 (as the case may be) have effect, subject to specified modifications and to any other necessary modifications (see the Railways and Transport Safety Act 2003 s 83(1), Table), namely:

24 (1) the Road Traffic Act 1988 s 6 (power to administer preliminary tests) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARAS 979, 985);

25 (2) s 6A (preliminary breath test) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 980);

26 (3) s 6B (preliminary impairment test) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 981);

27 (4) s 6C (preliminary drug test) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 982);

28 (5) s 6D (arrest) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 983);

29 (6) s 6E (power of entry) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 984);

30 (7) s 7 (provision of specimens for analysis) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARAS 986, 988);

31 (8) s 7A (specimens of blood taken from persons incapable of consenting) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 987);

32 (9) s 8 (choice of specimens of breath) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 982);

33 (10) s 9 (protection for hospital patients) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 989);

34 (11) s 10 (detention of persons affected by alcohol or a drug) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 990);

35 (12) s 11 (interpretation of ss 4-10);

36 (13) the Road Traffic Offenders Act 1988 s 15 (use of specimens) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 991);

37 (14) s 16 (documentary evidence) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 991).

The Secretary of State may by regulations amend the Railways and Transport Safety Act 2003 s 83(1), Table: see s 83(2), (3).

UPDATE

1162 Alcohol and drugs offences applying to professional shipping staff

NOTE 3--Appointed day for commencement of the Armed Forces Act 2006 Sch 16 para 198 is 31 October 2009: SI 2009/1167.

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1163. Alcohol and drugs offences applying to non-professional shipping staff.

As from a day to be appointed, the following provisions have effect¹.

A person² who:

- 1356 (1) is on board a ship³ which is under way⁴;
- 1357 (2) is exercising, or purporting or attempting to exercise, a function in connection with the navigation of the ship⁵; and
- 1358 (3) is not a person to whom the provisions relating to professional staff⁶ applies⁷,

commits an offence if his ability to exercise the function mentioned in head (2) above is impaired because of drink or drugs⁸; and such a person⁹ also commits an offence if the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit¹⁰.

A person guilty of such an offence¹¹ is liable, on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine (or to both) or, on summary conviction, to a fine not exceeding the statutory maximum¹².

1 The Railways and Transport Safety Act 2003 s 80 comes into force as from a day appointed under s 120(1). At the date at which this volume states the law, such a day had been appointed in relation to s 80(4), (5) (see note 10) only (ie 30 March 2004: see the Railways and Transport Safety Act 2003 (Commencement No 2) Order 2004, SI 2004/827, art 3(c)); but no such day had been appointed in relation to the Railways and Transport Safety Act 2003 s 80(1)-(3) (see the text and notes 2-10).

2 Ie a person to whom the Railways and Transport Safety Act 2003 s 80 applies (see heads (1) to (3) in the text): see s 80(1).

3 As to the meaning of 'ship' for these purposes, and as to the ships and persons to which the Railways and Transport Safety Act 2003 Pt 4 applies generally, see PARA 1162 note 3.

4 Railways and Transport Safety Act 2003 s 80(1)(a). See note 1.

5 Railways and Transport Safety Act 2003 s 80(1)(b). See note 1. As to the meaning of references to the navigation of a vessel see PARA 1162 note 3.

6 Ie the Railways and Transport Safety Act 2003 s 78 or s 79 (see PARA 1162): see s 80(1)(c).

7 Railways and Transport Safety Act 2003 s 80(1)(c). See note 1.

8 Railways and Transport Safety Act 2003 s 80(2). See note 1. As to the meaning of 'drug' for these purposes see PARA 1162 note 6.

9 Ie a person to whom the Railways and Transport Safety Act 2003 s 80 applies (see heads (1) to (3) in the text): see s 80(3).

10 Railways and Transport Safety Act 2003 s 80(3). See note 1. As to the prescribed limit of alcohol for the purposes of Pt 4 see PARA 1162 note 8.

The Secretary of State may make regulations providing for s 80(3) not to apply in specified circumstances (s 80(4)); and regulations under s 80(4) may make provision by reference, in particular, to the power of a motor, to the size of a ship, or to location (s 80(5)). See note 1. As to the Secretary of State for these purposes see

RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 35. As to regulations under the Railways and Transport Safety Act 2003 Pt 4 generally see PARA 1162 note 8.

11 le an offence under the Railways and Transport Safety Act 2003 Pt 4: see s 82.

12 Railways and Transport Safety Act 2003 s 82. As to the meaning of 'statutory maximum' see PARA 1099.

In relation to an offence under Pt 4, specified provisions of the Road Traffic Act 1988 and of the Road Traffic Offenders Act 1988 have effect, subject to specified modifications and to any other necessary modifications: see the Railways and Transport Safety Act 2003 s 83(1), Table; and PARA 1162 note 25.

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1164. Powers of police and marine officials where alcohol and drugs offences are suspected.

A marine official¹ may detain a ship² if he reasonably suspects that a person who is or may be on board the ship either is committing an offence related to alcohol or drugs³, or has committed such an offence⁴. This power of detention is conditional upon the marine official making a request (either before the detention or as soon as possible after its commencement) for a constable in uniform to attend, and it lapses when a constable in uniform has decided whether or not to exercise one of the powers available to him in such circumstances⁵ and has informed the marine official of his decision⁶.

A constable may arrest a person without a warrant if the constable reasonably suspects that the person (because his ability to exercise a function required of him is impaired due to drink or drugs) either is committing an offence⁷, or has committed such an offence and is still under the influence of drink or drugs⁸.

A constable in uniform may board a ship if he reasonably suspects that he may wish to exercise one of the powers available to him in relation to suspected alcohol or drugs offences⁹ or exercise his right of arrest without a warrant in such circumstances¹⁰ in respect of a person who is or may be on the ship¹¹. A constable in uniform also may enter any place if he reasonably suspects that he may wish to exercise such a power¹² in respect of a person who is or may be in that place¹³.

1 For these purposes, 'marine official' means:

- 38 (1) a harbour master (or an assistant of a harbour master) appointed by a harbour authority (Railways and Transport Safety Act 2003 s 84(3)(a));
- 39 (2) a person listed in the Merchant Shipping Act 1995 s 284(1)(a)-(d) (detention of ship) (see PARA 1253) (Railways and Transport Safety Act 2003 s 84(3)(b)); and
- 40 (3) a person falling within a class designated by order of the Secretary of State (s 84(3)(c)).

In construing the Merchant Shipping Act 1995 s 284(1)(b) (detention by person authorised by Secretary of State) for the purpose of head (2) above, the reference to authorisation to exercise powers under s 284 is to be taken as a reference both to general authorisation to exercise powers under s 284, and to general or particular authorisation to exercise powers under the Railways and Transport Safety Act 2003 s 84: s 84(4). The power under head (3) above for the Secretary of State to designate a class of person includes a power for him to designate either himself, or one or more persons employed in his Department (s 88(2)) and an order under head (3) above is subject to annulment in pursuance of a resolution of either House of Parliament (s 88(5)). Orders under Pt 4 (ss 78-91) may make transitional, supplemental and incidental provision, make provision generally or for specified purposes only, and make different provision for different purposes (s 88(1)); and such orders must be made by statutory instrument (s 88(3)). As to the Secretary of State for these purposes see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 35. As to the meaning of 'harbour authority' see PARA 68 note 4; definition applied by s 89(2)(c).

2 As to the meaning of 'ship' for these purposes, and as to the ships and persons to which the Railways and Transport Safety Act 2003 Pt 4 applies generally, see PARA 1162 note 3. However, s 84 does not have effect in relation to a ship which is being used for a purpose of Her Majesty's forces, or forms part of the Royal Fleet Auxiliary Service: s 90(3).

3 le under the Railways and Transport Safety Act 2003 s 78 or s 79 (see PARA 1162) or s 80 (see PARA 1163): see s 84(1). As to the meaning of 'drug' for these purposes see PARA 1162 note 6.

4 Railways and Transport Safety Act 2003 s 84(1).

5 le by virtue of the Railways and Transport Safety Act 2003 s 83 (see PARA 1162 note 25): see s 84(2).

6 Railways and Transport Safety Act 2003 s 84(2).

7 le an offence under the Railways and Transport Safety Act 2003 s 78(2) or s 79(2) (see PARA 1162) or s 80(2) (see PARA 1163): see s 85(1).

8 Railways and Transport Safety Act 2003 s 85(1). However, a person may not be arrested under s 85(1) while he is at a hospital as a patient: s 85(2). For this purpose, 'hospital' means an institution which provides medical or surgical treatment for in-patients or out-patients, and is not on a ship: s 85(3).

An arrest under s 85 is treated as arrest for an offence for the purposes of the Police and Criminal Evidence Act 1984 Pt IV (ss 34-51) (detention) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 938 et seq): Railways and Transport Safety Act 2003 s 85(4).

9 le by virtue of the Railways and Transport Safety Act 2003 s 83 (see PARA 1162 note 25): see s 86(1).

10 le by virtue of the Railways and Transport Safety Act 2003 s 85 (see the text and notes 7-8): see s 86(1).

11 Railways and Transport Safety Act 2003 s 86(1). For the purposes of boarding a ship under s 86 a constable may use reasonable force and he may be accompanied by one or more persons: s 86(3).

12 le by virtue of the Railways and Transport Safety Act 2003 s 83 (see PARA 1162 note 25) or by virtue of s 85 (see the text and notes 7-8): see s 86(2).

13 Railways and Transport Safety Act 2003 s 86(2). For the purposes of entering a place under s 86 a constable may use reasonable force and he may be accompanied by one or more persons: s 86(3).

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1165. Unauthorised liquor on board a United Kingdom fishing vessel.

As from a day to be appointed, the following provisions have effect¹.

A person who, in the United Kingdom² or elsewhere³:

- 1359 (1) takes any unauthorised liquor⁴ on board a United Kingdom fishing vessel⁵;
- 1360 (2) has any unauthorised liquor in his possession on board such a vessel⁶;
- 1361 (3) permits another person to take on board such a vessel, or to have in his possession on board such a vessel, any unauthorised liquor⁷; or
- 1362 (4) intentionally obstructs another person in the exercise of powers conferred on the other person⁸ in relation to suspected offences under head (1) or head (2) above⁹,

is guilty of an offence¹⁰. A person guilty of such an offence is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding the statutory maximum¹¹.

It is a defence in proceedings for an offence under head (1) or head (2) above to prove:

- 1363 (a) that the accused believed that the liquor in question was not unauthorised liquor in relation to the vessel in question and that he had reasonable grounds for the belief¹²; or
- 1364 (b) that the accused did not know that the liquor in question was in his possession¹³.

It is a defence in proceedings for an offence under head (3) above to prove that the accused believed that the liquor in question was not unauthorised liquor in relation to the vessel in question and that he had reasonable grounds for the belief¹⁴.

If an authorised person¹⁵ has reason to believe that an offence under head (1) or head (2) above has been committed by another person in connection with a fishing vessel, the authorised person¹⁶:

- 1365 (i) may go on board the vessel and search it and any property on it and may, if the other person is on board the vessel, search him there in an authorised manner¹⁷; and
- 1366 (ii) may take possession of any liquor which he finds on the vessel and has reason to believe is unauthorised liquor and may detain the liquor for the period needed to ensure that the liquor is available as evidence in proceedings for the offence¹⁸.

¹ The Merchant Shipping Act 1995 s 118 does not have effect until the Secretary of State by order appoints a day for s 118 to come into force: see s 314(3), Sch 14 para 5(1), (2); and PARA 16. At the date at which this volume states the law, no such order had been made. As to the Secretary of State see PARA 38.

² As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping Act 1995 s 118(1). See note 1.

4 For these purposes, 'unauthorised liquor' means, in relation to a vessel, liquor as to which permission to take it on board the vessel has been given neither by the master nor the owner of the vessel nor by a person authorised by the owner of the vessel to give such permission; and 'liquor' means spirits, wine, beer, cider, perry and any other fermented, distilled or spirituous liquor: Merchant Shipping Act 1995 s 118(6). Any reference in s 118(6) to the owner of a vessel is to be construed as excluding any member of the crew of the vessel and, subject thereto, as a reference to the person or all the persons who, in the certificate of registration of the vessel, is or are stated to be the registered owner or owners of the vessel: s 118(7). As to the meaning of 'master' see PARA 424. As to rights of ownership under the Merchant Shipping Act 1995 see PARA 237 et seq; and as to certificates of registration under the Merchant Shipping Act 1995 see PARA 298 et seq.

5 Merchant Shipping Act 1995 s 118(1)(a). See note 1. As to the meaning of 'fishing vessel' see PARA 230 note 9; and as to the meaning of 'United Kingdom fishing vessel' see PARA 230.

6 Merchant Shipping Act 1995 s 118(1)(b). See note 1.

7 Merchant Shipping Act 1995 s 118(1)(c). See note 1.

8 le by the Merchant Shipping Act 1995 s 118(5) (see the text and notes 15-18): see s 118(1)(d).

9 Merchant Shipping Act 1995 s 118(1)(d). See note 1.

10 Merchant Shipping Act 1995 s 118(1). See note 1. As to the Secretary of State's power to grant exemptions see PARA 425.

11 Merchant Shipping Act 1995 s 118(2). See note 1. As to the meaning of 'statutory maximum' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

12 Merchant Shipping Act 1995 s 118(3)(a). See note 1.

13 Merchant Shipping Act 1995 s 118(3)(b). See note 1.

14 Merchant Shipping Act 1995 s 118(4). See note 1.

15 For these purposes, 'authorised person', in relation to a vessel, means a superintendent, a proper officer, a person appointed in pursuance of the Merchant Shipping Act 1995 s 258(1)(c) (see PARA 48), the master of the vessel in question, the owner of the vessel in question, or any person instructed by the master or owner to prevent the commission of offences under s 118(1) (see the text and notes 1-10) in relation to the vessel: s 118(6). As to the meaning of 'superintendent' see PARA 60 note 1; and as to the appointment of superintendents see PARA 60. As to the meaning of 'proper officer' see PARA 48 note 11.

16 Merchant Shipping Act 1995 s 118(5). See note 1.

17 Merchant Shipping Act 1995 s 118(5)(a). For these purposes, 'authorised manner' means a manner authorised by regulations made by the Secretary of State: Merchant Shipping Act 1995 s 118(6). See note 1. At the date at which this volume states the law, no such regulations had been made and none have effect as if so made. As to the power of the Secretary of State to make subordinate legislation under the Merchant Shipping Act 1995 generally, and as to the Secretary of State's power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations etc, see PARA 41.

18 Merchant Shipping Act 1995 s 118(5)(b). See note 1.

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(iii) Safety Offences

A. OFFENCES UNDER GENERAL SAFETY PROVISIONS

1166. Contravention of safety requirements applicable to commercially operated vessels.

Contravention of any of the provisions governing the safety requirements that are applicable to commercially operated vessels¹ is an offence by the owner and master of the vessel which renders both of them liable, on conviction on indictment, to imprisonment for a term not exceeding two years and a fine, or, on summary conviction, to a fine not exceeding the statutory maximum².

It is a good defence to such a charge to prove that the person charged took all reasonable steps to avoid the commission of the offence³.

¹ The contravention of any of the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771 (see PARA 609 et seq): see reg 8(1). As to the vessels generally to which the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, apply see PARA 609.

² Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 8(1). As to the meaning of 'statutory maximum' see PARA 1099.

³ Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, SI 1998/2771, reg 8(2).

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1167. Contravention of safety requirements applicable to high speed craft.

Any contravention of the Merchant Shipping (High Speed Craft) Regulations 2004¹ in respect of a high speed craft² is an offence by both the owner³ and the master of that craft punishable, on summary conviction, by a fine not exceeding the statutory maximum⁴ and, on conviction on indictment, by imprisonment for a term not exceeding two years or a fine (or both)⁵.

Any contravention of the restrictions on the behaviour of persons on passenger craft⁶ is an offence punishable, on summary conviction, by a fine not exceeding level 2 on the standard scale⁷.

It is a defence for a person charged under the Merchant Shipping (High Speed Craft) Regulations 2004⁸ to show that he took all reasonable steps to ensure compliance with the Regulations⁹.

1 Ie the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302 (see PARA 614 et seq), other than reg 9 (as to which see PARA 621): see reg 10(1).

2 As to the meaning of 'high speed craft' see PARA 614 note 2.

3 As to references in the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, to the owner see PARA 614 note 21.

4 As to the meaning of 'statutory maximum' see PARA 1099.

5 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 10(1).

6 Ie the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 9 (as to which see PARA 621): see reg 10(2).

7 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 10(2). As to the meaning of 'standard scale' see PARA 1099.

8 Ie under the Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302: see reg 10(3).

9 Merchant Shipping (High Speed Craft) Regulations 2004, SI 2004/302, reg 10(3).

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1168. Contravention of fishing vessel construction rules.

If:

1367 (1) the fishing vessel construction rules¹ are contravened² with respect to any vessel³; or

1368 (2) a vessel is exempted⁴ from any requirement subject to a condition and the condition is not complied with⁵,

the owner or master⁶ of the vessel is liable, on conviction on indictment, to a fine or, on summary conviction, to a fine not exceeding the statutory maximum⁷.

1 As to the meaning of 'fishing vessel construction rules' see PARA 604. As to the meaning of 'fishing vessel' see PARA 230 note 9.

2 As to the meaning of 'contravention' see PARA 50 note 3.

3 Merchant Shipping Act 1995 s 121(5)(a).

4 Ie under the Merchant Shipping Act 1995 s 121(2) (see PARA 604): see s 121(5)(b).

5 Merchant Shipping Act 1995 s 121(5)(b).

6 As to the meaning of 'master' see PARA 424.

7 Merchant Shipping Act 1995 s 121(5). As to the meaning of 'statutory maximum' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1169. Contravention of provisions governing control of fishing vessel certificates.

The Secretary of State¹ may require a fishing vessel certificate² which has expired or been cancelled, to be delivered up as he directs³. If the owner or skipper of the fishing vessel⁴ fails without reasonable excuse to comply with such a requirement, he is liable, on summary conviction, to a fine not exceeding level 2 on the standard scale⁵.

The owner or skipper of a fishing vessel to whom a fishing vessel certificate is issued must forthwith, on the receipt of the certificate by him (or his agent), cause a copy of it to be put up in some conspicuous place on board the vessel, so as to be legible to all persons on board, and to be kept so put up and legible while the certificate remains in force and the vessel is in use⁶. If the owner or skipper of a fishing vessel fails without reasonable excuse to comply with that requirement, he is liable, on summary conviction, to a fine not exceeding level 2 on the standard scale⁷.

If any person intentionally makes, or assists in making, or procures to be made, a false or fraudulent fishing vessel certificate, he is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding the statutory maximum⁸ or imprisonment for a term not exceeding six months (or to both)⁹.

A fishing vessel certificate is admissible in evidence¹⁰.

1 As to the Secretary of State see PARA 38.

2 As to the meaning of 'fishing vessel certificate' see PARA 606.

3 See the Merchant Shipping Act 1995 s 124(1): and PARA 606.

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 124 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 124 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

4 As to the meaning of 'fishing vessel' see PARA 230 note 9.

5 Merchant Shipping Act 1995 s 124(2). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

6 See the Merchant Shipping Act 1995 s 124(3): and PARA 606.

7 Merchant Shipping Act 1995 s 124(4).

8 As to the meaning of 'statutory maximum' see PARA 1099.

9 Merchant Shipping Act 1995 s 124(5).

10 Merchant Shipping Act 1995 s 124(7). As to admissibility of documents in evidence see PARA 1110.

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1170. Contravention of prohibition on going to sea without appropriate certificate.

No fishing vessel¹ required to be surveyed under the fishing vessel survey rules² must go to sea unless there are in force fishing vessel certificates³ showing that the vessel complies with such of the requirements of the fishing vessel construction and equipment provisions⁴ as are applicable to the vessel⁵. If a fishing vessel goes to sea in contravention⁶ of this prohibition, the owner or skipper of the vessel is liable, on conviction on indictment, to a fine or, on summary conviction, to a fine not exceeding the statutory maximum⁷.

1 As to the meaning of 'fishing vessel' see PARA 230 note 9.

2 As to the meaning of 'fishing vessel survey rules' see PARA 605.

3 As to the meaning of 'fishing vessel certificate' see PARA 606.

4 As to the meaning of 'fishing vessel construction and equipment provisions' see PARA 605 note 3.

5 See the Merchant Shipping Act 1995 s 125(1); and PARA 607.

6 As to the meaning of 'contravention' see PARA 50 note 3. As to the powers of inspectors appointed under the Merchant Shipping Act 1995 s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 125 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 125 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

7 Merchant Shipping Act 1995 s 125(2). As to the meaning of 'statutory maximum' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1171. Failure to give notice of alterations when a fishing vessel certificate is in force.

If the notice that is required¹ when an alteration² is made to a fishing vessel³ in respect of which a fishing vessel certificate⁴ is in force, is not given as so required, the owner or skipper of the fishing vessel is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale⁵.

1 le by the Merchant Shipping Act 1995 s 126(1) (see PARA 608): see s 126(2).

2 As to the meaning of 'alteration' for these purposes see PARA 608 note 4.

3 As to the meaning of 'fishing vessel' see PARA 230 note 9.

4 As to the meaning of 'fishing vessel certificate' see PARA 606.

5 Merchant Shipping Act 1995 s 126(2). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

As to the powers of inspectors appointed under the Merchant Shipping Act 1995 s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 126 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 126 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

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1172. Contravention of duties imposed by health and safety provisions.

Contravention of the requirements imposed by the general health and safety at work provisions which apply to activities of workers on merchant shipping and fishing vessels¹, or by the related provisions governing manual handling operations² and safety signs and signals³, is an offence⁴.

1 Ie the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962: see PARA 623.

2 Ie the Merchant Shipping and Fishing Vessels (Manual Handling Operations) Regulations 1998, SI 1998/2857: see PARA 623.

3 Ie the Merchant Shipping and Fishing Vessels (Safety Signs and Signals) Regulations 2001, SI 2001/3444: see PARA 623.

4 See the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962, reg 24; the Merchant Shipping and Fishing Vessels (Manual Handling Operations) Regulations 1998, SI 1998/2857, reg 7; and the Merchant Shipping and Fishing Vessels (Safety Signs and Signals) Regulations 2001, SI 2001/3444, reg 7. As to related powers of inspection and detention see PARA 623. Provisions of the Merchant Shipping Act 1995 dealing with the enforcement of detention (ie s 284(1)-(5), (8) (see PARA 1253)) and with arbitration and compensation (ie ss 96, 97 (see PARAS 1205, 1206)) are applied with modifications: see PARA 623.

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1173. Contravention of duties imposed by working time provisions.

Any contravention of the requirements imposed by the provisions which govern the organisation of working time for seafarers¹, for sea-fishermen², or for workers on the inland waterways³, is an offence⁴.

1 Ie the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125: see PARA 625.

2 Ie the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713: see PARA 626.

3 Ie the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049: see PARA 625.

4 See the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125, reg 20 (cited in PARA 625); the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713, reg 18 (cited in PARA 626); and the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049, reg 17 (cited in PARA 625). As to related powers of inspection and detention see PARAS 625, 626. Provisions of the Merchant Shipping Act 1995 dealing with the enforcement of detention (ie s 284(1)-(5), (8) (see PARA 1253)) and with arbitration and compensation (ie ss 96, 97 (see PARAS 1205-1206)) are applied with modifications: see PARAS 625-626.

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1174. Failure to provide adequate provisions and water.

Any contravention of the requirements imposed by the provisions which govern the duty of the employer and master of every sea-going United Kingdom ship, with certain exceptions, to ensure that there are provided on their ship adequate provisions and water¹, is an offence².

1 Ie the Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102: see PARA 627.

2 See the Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102, regs 6, 7; and PARA 627.

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1175. Contravention of duty to carry a ship's doctor.

Any contravention of the duty placed on the owner¹ of a United Kingdom ship, having more than 100 persons on board and engaged on certain voyages², to carry a qualified doctor³ is punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale⁴. It is a defence for a person charged with such an offence to show that he took all reasonable precautions and exercised due diligence to avoid the commission of the offence⁵.

1 As to the meaning of 'owner' for these purposes see PARA 628 note 1.

2 I.e. engaged on an international voyage of more than three days or on a voyage during which it is more than one and a half days' sailing time from a port with adequate medical equipment: see the Merchant Shipping (Ships' Doctors) Regulations 1995, SI 1995/1803, reg 3; and PARA 628.

3 I.e. the duty set out in the Merchant Shipping (Ships' Doctors) Regulations 1995, SI 1995/1803, reg 3: see PARA 628. As to the meaning of 'qualified doctor' for these purposes see PARA 628 note 2.

4 Merchant Shipping (Ships' Doctors) Regulations 1995, SI 1995/1803, reg 4(1). As to the meaning of 'standard scale' see PARA 1099.

5 Merchant Shipping (Ships' Doctors) Regulations 1995, SI 1995/1803, reg 4(2).

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1176. Contravention of requirements for seafarers to hold valid medical fitness certificate.

Any contravention of the provisions which require seafarers to hold a valid medical fitness certificate¹ is an offence².

1 I.e. the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055: see PARA 629.

2 See the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055, reg 17; and PARA 629.

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1177. Contravention of requirement to carry on board prescribed medical stores.

Any contravention of the provisions which require every United Kingdom ship and government ship (other than a ship employed in inland navigation, a pleasure vessel used for non-commercial purposes and not manned by a professional crew, or a tug¹ operating in harbour areas)² to carry on board prescribed medical stores³, is an offence⁴.

1 As to the meaning of 'tug' see PARA 630 note 1.

2 As to the meaning of 'harbour area' see PARA 630 note 2.

3 I.e. as required by the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802: see PARA 630.

4 See the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802, regs 12, 13; and PARA 630.

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1178. Contravention of requirement to carry code of safe working practices.

Any contravention of the provisions which require the company¹ to ensure, in every United Kingdom ship² (except fishing vessels and pleasure vessels) that there is carried at least one copy of the Code of Safe Working Practices for Merchant Seamen³, to be kept in the custody of specified persons and easily accessible and readily available to all workers⁴, is an offence⁵.

1 As to the meaning of 'company' see PARA 631 note 4.

2 As to the meaning of 'United Kingdom ship' see PARA 631 note 1.

3 As to the Code of Safe Working Practices for Merchant Seamen see PARA 631 note 5.

4 I.e. any contravention of the requirements of the Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838 (see PARA 631): see reg 5.

5 See the Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998, SI 1998/1838, reg 5.

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1179. Failure to comply with the International Safety Management ('ISM') Code for large vessels.

Any contravention of the provisions which require compliance with the ISM Code¹ is an offence². It is a defence for a person charged with such an offence³ to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence⁴.

1 In any contravention of the provisions of the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, or of the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, as the case may be: see PARA 632. As to the meaning of 'ISM Code' see PARA 632.

2 See the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, regs 3-5 (reg 5 amended by SI 2001/3209); the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 19; and PARA 632.

3 In any contravention of the provisions of the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022 (see reg 6), or under the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561 (see reg 20), as the case may be.

4 See the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, reg 6; and the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998, SI 1998/1561, reg 20. The provisions of the Merchant Shipping Act 1995 s 277 (offences by bodies corporate) (see PARA 1102) apply in respect of offences under the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, as they apply in respect of offences under the Merchant Shipping Act 1995: see the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997, SI 1997/3022, reg 7.

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1180. Failure to comply with the safety management code for domestic passenger ships.

Any contravention of the provisions which require compliance with the Safety Management Code for Domestic Passenger Ships¹ is an offence². It is a defence for a person charged with such an offence to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence³.

1 Ie any contravention of the provisions of the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209: see PARA 633. As to the meaning of 'Safety Management Code for Domestic Passenger Ships' see PARA 633 note 2.

2 See the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 10. For these purposes, provisions of the Merchant Shipping Act 1995 dealing with the enforcement of detention (ie s 284 (see PARA 1253)) and with arbitration and compensation (ie ss 96, 97 (see PARAS 1205, 1206)) are applied with modifications: see the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 10.

3 See the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209, reg 10.

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1181. Contravention of general safety of navigation requirements.

Provision is made for offences and penalties to apply where various requirements relating to the safety of navigation¹ are contravened², and for the detention of a ship in any such case of non-compliance³.

1 See the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473; and PARA 641. These regulations give effect to those provisions of the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874), with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277) (see PARA 8) which identify certain navigation safety services which should be provided by contracting governments: see PARA 641.

2 See the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473, reg 10, Sch 4.

3 In any case where a ship does not comply with the requirements of the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473, the ship is liable to be detained and the Merchant Shipping Act 1995 s 284(1)-(6), (8) (enforcing detention of ships) (see PARA 1253) has effect in relation to the ship, subject to modifications: see the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473, reg 11.

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1182. Contravention of requirements relating to counting and recording passengers on board.

If there is any breach of the provisions which require the counting and registration of persons¹ on board passenger ships², in respect of a passenger ship, the owner³ is guilty of an offence punishable, on summary conviction, by a fine not exceeding the statutory maximum⁴ and, on conviction on indictment, by imprisonment for a term not exceeding two years or a fine (or both)⁵.

If there is any breach of the prohibition on such a ship leaving any landing point⁶ in circumstances where:

- 1369 (1) the total number of persons on board has not been communicated to the master of the ship and the passenger registrar⁷ or the owner has not properly recorded and communicated to the master of the ship any person's declared need for special care or assistance in emergency situations⁸; or
- 1370 (2) the total number of persons on board the ship exceeds the number of persons the ship is permitted to carry⁹,

the master is guilty of an offence punishable, on summary conviction, by a fine not exceeding the statutory maximum and, on conviction on indictment, by imprisonment for a term not exceeding two years or a fine (or both)¹⁰.

Any person who¹¹, either knowingly or recklessly makes any false statement liable or intended to lead to error in the determination of the total number of persons on board a passenger ship or in the collection of information so required¹², or any person who falsifies the information collected or transmitted to the passenger registrar, is guilty of an offence punishable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both)¹³.

It is a good defence to such a charge¹⁴ for the person charged to prove that he took all reasonable steps to avoid the commission of the offence¹⁵; and, without prejudice to this provision¹⁶, it is a good defence to a charge of knowingly or recklessly making any false statement or of falsifying the information collected or transmitted to the passenger registrar¹⁷, for a person providing information to the owner of a ship in respect of other persons not being members of his family, being information required by the owner¹⁸, to prove that the information was collected by him in good faith¹⁹.

1 As to the meaning of 'person' for these purposes see PARA 650 note 3.

2 I.e. any breach of the requirements of the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869 (see PARAS 650, 651): see reg 11(1). As to the meaning of 'passenger ship' for these purposes see PARA 650 note 1.

3 As to the meaning of references to the owner of a ship see PARA 650 note 1.

4 As to the meaning of 'statutory maximum' see PARA 1099.

- 5 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 11(1).
- 6 As to the meaning of 'landing point' for these purposes see PARA 650 note 2.
- 7 As to the meaning of 'passenger registrar' for these purposes see PARA 650 note 19.
- 8 Ie if there is a breach of the requirements of the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(6)(a) (see PARA 650): see reg 11(1).
- 9 Ie if there is a breach of the requirements of the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 5(6)(b) (see PARA 650): see reg 11(1).
- 10 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 11(1).
- 11 Ie any person who contravenes the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 10 (see PARA 650): see reg 11(2).
- 12 Ie the information required by the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 6(3) (see PARA 650): see reg 11(2).
- 13 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 11(2).
- 14 Ie under the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869: see reg 12(1).
- 15 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 12(1).
- 16 Ie without prejudice to the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 12(1): see reg 12(2).
- 17 Ie a charge under the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 10 (see PARA 650): see reg 12(2).
- 18 Ie information required by the owner pursuant to the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869: see reg 12(2).
- 19 Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, SI 1999/1869, reg 12(2).

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1183. Failure to furnish, or falsifying, returns in respect of carriage of goods and passengers by sea.

If any person required to furnish periodical or other returns about cargo, passenger and vessel movement, certain particulars in relation to the transport of containers or ro-ro units, and information in relation to the vessel¹, fails to furnish those returns as required, or makes a return which he knows to be false or recklessly makes a false return, he is, unless he proves that he had reasonable excuse for the failure or false return, liable, on summary conviction, to a fine not exceeding level 4 on the standard scale².

1 le any person required to furnish returns under the Statistical Returns (Carriage of Goods and Passengers by Sea) Regulations 1997, SI 1997/2330 (see PARA 44): see reg 4.

2 Statistical Returns (Carriage of Goods and Passengers by Sea) Regulations 1997, SI 1997/2330, reg 4. As to the meaning of 'standard scale' see PARA 1099.

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1184. Failure to furnish, or falsifying, returns in respect of passengers on board ship.

If:

1371 (1) the master¹ of a passenger ship² fails to make a return as required by the Secretary of State³ giving the total number of any passengers carried, or makes a false return⁴;

1372 (2) any passenger refuses to give any information required by the master of the ship for the purpose of the return so required, or, for that purpose, gives to the master information which he knows to be false or recklessly gives to him information which is false⁵,

the master or, as the case may be, passenger is liable, on summary conviction, to a fine not exceeding level 2 on the standard scale⁶ (in the case of failure or refusal) or level 3 on the standard scale (in the case of a false return or false information)⁷.

1 As to the meaning of 'master' see PARA 424.

2 I.e. a ship, whether or not a United Kingdom ship, which carries any passenger to a place in the United Kingdom from any place out of the United Kingdom, or from any place in the United Kingdom to any place out of the United Kingdom: see the Merchant Shipping Act 1995 s 107(1). As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 I.e. as required by the Merchant Shipping Act 1995 s 107 (see PARA 653): see s 107(3)(a). As to the Secretary of State see PARA 38.

4 Merchant Shipping Act 1995 s 107(3)(a).

5 Merchant Shipping Act 1995 s 107(3)(b).

6 As to the meaning of 'standard scale' see PARA 1099.

7 Merchant Shipping Act 1995 s 107(3). As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1185. Master's failure to make returns as to births and deaths occurring in his ship.

The master of a ship who fails to comply with any of the requirements to make returns in relation to the following births and deaths occurring in his ship¹, namely:

- 1373 (1) where a child is born in a ship which is registered in the United Kingdom²;
- 1374 (2) where a person dies in a ship registered in the United Kingdom or where any person employed in such a ship dies outside the United Kingdom³;
- 1375 (3) where a citizen of the United Kingdom and Colonies⁴ is born or dies in a ship not registered in the United Kingdom, and the ship thereafter calls at a port in the United Kingdom in the course of or at the end of the voyage during which the death occurs⁵,

or if he fails to make the required returns in the manner prescribed⁶, he is guilty of an offence⁷ and liable, on summary conviction, to a fine not exceeding level 2 on the standard scale⁸.

1 The master of a ship who fails to comply with the provisions of the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 2 (see head (1) in the text), including reg 2 as extended to unregistered British ships by reg 12(1) (see PARA 655 note 1), reg 3 (see head (2) in the text), including reg 3 as so extended, reg 4 (see head (3) in the text), or regs 5, 6 (see PARA 655), including regs 5, 6 as so extended: see reg 13(1).

2 See the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 2 (see PARA 655), including reg 2 as extended to unregistered British ships by reg 12(1) (see PARA 655 note 1): see reg 13(1). As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 See the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 3 (see PARA 655), including reg 3 as extended to unregistered British ships by reg 12(1) (see PARA 655 note 1): see reg 13(1).

4 As to the meaning of 'colony' for the purposes of the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 17.

5 See the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 4 (see PARA 655): see reg 13(1).

6 The manner prescribed by the provisions of the Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 5, 6 (see PARA 655), including regs 5, 6 as extended to unregistered British ships by reg 12(1) (see PARA 655 note 1): see reg 13(1).

7 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 13(1).

8 Merchant Shipping (Returns of Births and Deaths) Regulations 1979, SI 1979/1577, reg 13(2); Criminal Justice Act 1982 s 46(1), (4). As to the meaning of 'standard scale' see PARA 1099.

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1186. Contravention of requirements relating to dangerous goods, marine pollutants etc.

Provision is made for offences and penalties to apply where various requirements relating to the handling, stowage and carriage of dangerous goods and marine pollutants by merchant shipping¹ are contravened², and for the detention of a ship in any such case of non-compliance³.

Any contravention by the operator⁴ or master of their duty to ensure that a ship carrying INF cargo⁵ complies with the requirements of the INF Code⁶ or of their duty to refuse such cargo for carriage in a ship which has not been issued with a Certificate of Fitness⁷ is an offence for which each of them is liable⁸, on summary conviction, to a fine not exceeding the statutory maximum⁹ and on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both)¹⁰. In any case where a ship does not comply with the requirements relating to the carriage of packaged irradiated nuclear fuel by sea¹¹, the ship is liable to be detained¹².

Offences and penalties apply also where various requirements relating to the reporting of dangerous goods¹³ or harmful substances in packaged form¹⁴ which are being carried by merchant shipping¹⁵ are contravened¹⁶, and for the detention of a ship in any such case of non-compliance¹⁷.

1 See the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367; and PARA 657. As to the meaning of 'dangerous goods' and 'marine pollutant' for these purposes see PARA 657 note 1.

2 See the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 6 (general duties of operators and employers), reg 7 (general duties of employees aboard ship), reg 8 (misconduct endangering a United Kingdom ship or persons aboard), reg 10 (dangerous goods declaration or marine pollutants declaration), reg 11 (preparation of goods for transport), reg 12 (Container or Vehicle Packing Certificates), reg 14 (list, manifest or stowage plans), reg 15 (marking, labelling or placarding of packaged goods), reg 16 (stowage of packaged goods on board ship), regs 17, 18 (cargo securing documentation), reg 19 (duty of operator and master to ensure that all employees are familiar with the essential actions to be taken in an emergency involving such packaged goods as are carried on the ship), reg 20 (dangerous goods or marine pollutants handled or carried in bulk), reg 21 (documentation related to dangerous goods or marine pollutants handled or carried in bulk), reg 22 (spaces for carriage of packaged goods and dangerous goods in solid form in bulk); and PARA 657. As to penalties see reg 24; and as to offences due to the fault of another person see reg 25. In any proceedings for an offence under reg 6 consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it is for the accused to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement: reg 9 (amended by SI 2004/2110).

3 See the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 23. In any case where a ship does not comply with the requirements of the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, the ship is liable to be detained and the Merchant Shipping Act 1995 s 284 (enforcing detention of ships) (see PARA 1253) has effect in relation to the ship, subject to modifications: see the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, reg 23.

4 As to the meaning of 'operator' for these purposes see PARA 658 note 3.

5 As to the meaning of 'INF cargo' for these purposes see PARA 658 note 1.

6 le where there is a breach of the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 4(2) (see PARA 658): see reg 6(1). As to the meaning of 'Certificate of Fitness' for these purposes see PARA 658 note 6.

7 le where there is a breach of the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 5 (see PARA 658): see reg 6(1).

8 Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 6(1). It is, however, a defence for a person so charged to show that he took all reasonable steps to avoid the commission of the offence (reg 6(3)); and where the commission by any person of such an offence is due to the act or default of some other person, that other person is guilty of the offence and a person may be charged with and convicted of the offence by virtue of this provision whether or not proceedings are taken against the first-mentioned person (reg 8).

9 As to the meaning of 'statutory maximum' see PARA 1099.

10 Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 6(2).

11 le where there is a failure to comply with the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216 (see PARA 658): see reg 7.

12 See the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 7. In any case where a ship does not comply with the requirements of the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, the Merchant Shipping Act 1995 s 284 (enforcing detention of ships) (see PARA 1253) has effect in relation to the ship, subject to modifications: see the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216, reg 7.

13 As to the meaning of 'dangerous goods' for these purposes see PARA 659 note 3.

14 As to the meaning of 'harmful substances in packaged form' for these purposes see PARA 659 note 4.

15 See the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498; and PARA 659.

16 See the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 15 (amended by SI 1999/2121; SI 2001/1638; SI 2004/2110). It is a good defence to a charge under the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 15 to prove that the person charged took all reasonable steps to avoid committing the offence (see reg 15(6)); and where such an offence is committed, or would have been committed except for the operation of reg 15(6), by any person due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this provision whether or not proceedings are taken against the first mentioned person (reg 16).

17 Any person duly authorised by the Secretary of State may inspect any ship to which the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, apply and, if he is satisfied that there is a failure to comply in relation to that ship with relation to the requirements of reg 5 (see PARA 659), he may detain the ship until such requirements are met: reg 17. Where a ship is liable to be detained under the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, the Merchant Shipping Act 1995 s 284 (enforcing detention of ships) (see PARA 1253) has effect in relation to the ship, subject to modifications: see the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498, reg 18 (amended by SI 2004/2110). As to the Secretary of State see PARA 38.

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1187. Contravention of requirements relating to cargoes in need of special precautions.

The following persons are guilty of an offence under the provisions which relate to the carriage of cargoes in need of special precautions¹:

- 1376 (1) a shipper² or forwarder³ who fails to provide appropriate cargo⁴ information as required⁵, or who furnishes cargo information which he knows to be false or who recklessly furnishes cargo information which is false⁶;
- 1377 (2) an owner⁷ or master who accepts for carriage, or takes or receives on board, any cargo for which appropriate cargo information⁸ has not been furnished⁹;
- 1378 (3) an owner or master who contravenes the requirements¹⁰ to carry the appropriate documentation, including the International Grain Code¹¹;
- 1379 (4) an owner or master who contravenes the requirements¹² regarding the stowage and securing of cargo¹³;
- 1380 (5) a shipper or forwarder who contravenes the requirements¹⁴ relating to packaged goods which have been packed into or onto a cargo unit¹⁵;
- 1381 (6) an owner of a ship which transports, or a master who accepts for carriage, a bulk cargo¹⁶ which is liable to emit a toxic or flammable gas, or cause oxygen depletion in the cargo hold, without ensuring that the requirement¹⁷ for oxygen analysis and gas detection equipment has been complied with¹⁸;
- 1382 (7) an owner and master (individually) if the requirement¹⁹ as to the safe use of pesticides in ships is not complied with²⁰;
- 1383 (8) an owner who contravenes the requirement²¹ to ensure that the master is furnished with the required stability information²²;
- 1384 (9) a master who contravenes the conditions²³ for accepting for loading concentrates or other cargoes which may liquefy²⁴ or who contravenes the conditions²⁵ for accepting bulk cargo²⁶;
- 1385 (10) an owner who contravenes the duty²⁷ to ensure the ship is provided with a cargo loading manual²⁸;
- 1386 (11) a master who contravenes the provisions which require a plan for loading or unloading the ship to be agreed²⁹, or who fails to ensure that loading and unloading operations are conducted in accordance with the plan so agreed³⁰, or who fails to ensure that cargoes are loaded and trimmed as necessary³¹, or who fails to ensure that corrective action is taken where, during loading or unloading, any of the ship's limits³² are exceeded or are likely to become so³³, or who fails to ensure that the unloading method does not damage the ship's structure³⁴, or who fails to monitor cargo operations as required or fails to ensure that deviations from the plan agreed for loading or unloading are corrected³⁵;
- 1387 (12) a terminal representative³⁶ in the United Kingdom³⁷ who contravenes the provisions which require a plan for loading or unloading the ship to be agreed³⁸, or who fails to ensure that loading and unloading operations are conducted in accordance with the plan so agreed³⁹, or who fails to ensure that corrective action is taken where, during loading or unloading, any of the ship's limits⁴⁰ are exceeded or are likely to become so⁴¹, or who fails to ensure that the unloading method does not damage the ship's structure⁴²;

- 1388 (13) an owner or master who fails to ensure that a ship loading grain⁴³ complies with the International Grain Code and has on board a document of authorisation as required by that Code⁴⁴, or who permits a ship loaded in contravention of the International Grain Code outside the United Kingdom to enter any port in the United Kingdom so laden⁴⁵;
- 1389 (14) a person who orders the commencement of the loading of grain into a ship in the United Kingdom without satisfying himself first as to the conditions which are so required⁴⁶.

A person guilty of an offence under any of heads (1) to (14) above is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding the statutory maximum⁴⁷. In any proceedings for such an offence, it is a defence for a person to prove that all reasonable steps had been taken by that person to ensure compliance with the provisions⁴⁸.

In any case where a ship does not comply with the provisions relating to the carriage of cargoes⁴⁹, the ship is liable to be detained⁵⁰.

- 1 Ie under the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336 (see PARA 660 et seq).
- 2 As to the meaning of 'shipper' see PARA 660 note 1.
- 3 As to the meaning of 'forwarder' see PARA 660 note 9.
- 4 As to the meaning of 'cargo' for these purposes see PARA 660 note 1.
- 5 Ie as required by the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4 (see PARA 660): see reg 4(6).
- 6 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(6).
- 7 As to references to the owner see PARA 660 note 3.
- 8 Ie as required by the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4 (see PARA 660): see reg 4(7).
- 9 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 4(7).
- 10 Ie who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 5(1), (3) (see PARA 661): see reg 5(5).
- 11 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 5(5). As to the meaning of 'International Grain Code' see PARA 661 note 6.
- 12 Ie an owner or master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(1) (see PARA 662): see reg 6(3)(a).
- 13 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(3)(a).
- 14 Ie the requirements of the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(2) (see PARA 662): see reg 6(3)(b).
- 15 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 6(3)(b). As to the meaning of 'cargo unit' for these purposes see PARA 660 note 2.
- 16 As to the meaning of 'bulk cargo' see PARA 660 note 2.
- 17 Ie the requirement of the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 7(1) (see PARA 663): see reg 7(2).
- 18 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 7(2).

- 19 Ie the requirements of the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 8(1) (see PARA 664): see reg 8(2).
- 20 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 8(2).
- 21 Ie the requirement of the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(4) (see PARA 666): see reg 9(6).
- 22 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(6). The text refers to the stability information required by reg 9(1) (see PARA 666): see reg 9(6).
- 23 Ie a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(2) (see PARA 666): see reg 9(7).
- 24 As to the meaning of 'cargoes which may liquefy' see PARA 660 note 2.
- 25 Ie a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(5) (see PARA 666): see reg 9(7).
- 26 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 9(7).
- 27 Ie an owner who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2) (see PARA 667): see reg 10(9)(a).
- 28 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(9)(a).
- 29 Ie a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(3) (see PARA 667): see reg 10(9)(b).
- 30 Ie a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(6) (see PARA 667): see reg 10(9)(b).
- 31 Ie a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(4), (5) (see PARA 667): see reg 10(9)(b). As to the meaning of 'trimming' for these purposes see PARA 660 note 2.
- 32 Ie the limits of the ship referred to in the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2): see reg 10(7)(a); and PARA 667.
- 33 Ie a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(7)(b) (see PARA 667): see reg 10(9)(b).
- 34 Ie a master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(7)(c) (see PARA 667): see reg 10(9)(b).
- 35 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(9)(b). The text refers to a master who fails to monitor cargo operations as required by reg 10(8) or fails to ensure that deviations from the plan agreed for loading or unloading are corrected as required by reg 10(8) (see PARA 667): see reg 10(9)(b).
- 36 As to the meaning of 'terminal representative' see PARA 667 note 14.
- 37 As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 38 Ie a terminal representative in the United Kingdom who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(3) (see PARA 667): see reg 10(9)(c).
- 39 Ie a terminal representative in the United Kingdom who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(6) (see PARA 667): see reg 10(9)(c).
- 40 Ie the limits of the ship referred to in the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(2): see reg 10(7)(a); and PARA 667.
- 41 Ie a terminal representative in the United Kingdom who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(7)(b) (see PARA 667): see reg 10(9)(c).
- 42 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 10(9)(c). The text refers to a terminal representative in the United Kingdom who fails to ensure that the unloading method does not damage the ship's structure as required by reg 10(7)(c) (see PARA 667): see reg 10(9)(c).

43 As to the meaning of 'grain' see PARA 661 note 2.

44 Ie an owner or master who contravenes the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(2) (see PARA 668): see reg 11(5).

45 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(5). The text refers to an owner or master who permits a ship to enter any port in the United Kingdom in contravention of reg 11(3) (see PARA 668): see reg 11(5).

46 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 11(6). The text refers to a person who contravenes reg 11(4) (see PARA 668): see reg 11(6).

47 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 13(1). Where the commission by any person of an offence under the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, is due to the act or default of some other person, the other person is guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this provision whether or not proceedings are taken against the first-mentioned person: reg 14. As to the meaning of 'statutory maximum' see PARA 1099.

48 Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 13(2).

49 Ie with the provisions of the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336 (see PARA 660 et seq): see reg 12.

50 See the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 12. Where a ship is liable to be detained under the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, the Merchant Shipping Act 1995 s 284 (enforcing detention of ships) (see PARA 1253) has effect in relation to the ship, subject to modifications: see the Merchant Shipping (Carriage of Cargoes) Regulations 1999, SI 1999/336, reg 12.

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1188. Failure to comply with requirements prescribed for ships receiving trans-shipped fish.

If, without reasonable excuse, the master¹ of a ship², in respect of which a transshipment licence³ is in force, causes or permits any prohibition imposed by notice⁴ to be contravened in respect of the ship, that master is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding £50,000⁵.

If there is any contravention of the requirement for such ships to have compulsory insurance in place (or to have such other form of security which meets those same requirements)⁶, the owner, charterer and master are each guilty of an offence punishable, on summary conviction, by a fine not exceeding £50,000⁷.

Any contravention of the requirement to carry documentary evidence of such insurance or other security⁸ is an offence by any person required to produce such evidence punishable, on summary conviction, by a fine not exceeding level 4 on the standard scale⁹.

In any case where a ship does not comply with the requirements relating to compulsory insurance for ships receiving trans-shipped fish¹⁰, the ship is liable to be detained¹¹.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'ship' see PARA 229.

3 As to the meaning of 'transshipment licence' see PARA 669 note 4.

4 I.e. imposed by a notice under the Merchant Shipping Act 1995 s 100G(2) (see PARA 670): see s 100G(5) (s 100G added by the Merchant Shipping and Maritime Security Act 1997 s 11). The text refers to a notice served on the master of a ship under the Merchant Shipping Act 1995 s 100G(2) which specifies that his ship is contravening a requirement of regulations made by the Secretary of State under s 100F(2) (requirements to be met by ships in respect of which transshipment licences are in force) (see PARA 669) or under s 192A (compulsory insurance or security) (see PARA 1066): see s 100G(1), (2); and PARA 670.

5 Merchant Shipping Act 1995 s 100G(5) (as added: see note 4). As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

6 I.e. if there is any contravention of the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 4 (see PARA 1067): see reg 8(1).

7 Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 8(1). It is a defence for a person charged with an offence under reg 8(1) to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence: reg 8(3).

8 I.e. any contravention of the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 7 (see PARA 1067): see reg 8(2).

9 Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 8(2). As to the meaning of 'standard scale' see PARA 1099. It is a defence for a person charged

with an offence under reg 8(2) to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence: reg 8(3).

10 See the requirements of the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209 (see [PARA 1067](#)): see reg 9.

11 See the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 9. Where a ship is liable to be detained under the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, the Merchant Shipping Act 1995 s 284 (enforcing detention of ships) (see [PARA 1253](#)) has effect in relation to the ship, subject to necessary modifications: see the Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998, SI 1998/209, reg 9.

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1189. Penalties relating to contravention of load line provisions.

Where a ship proceeds, or attempts to proceed, to sea¹, without having been surveyed in accordance with the load lines rules², or marked with the appropriate marks³, or without complying with the conditions of assignment applicable to it⁴, or without the information as to the stability of the ship⁵, or as to the loading and ballasting of any ship of more than 150 metres in length⁶, that must be provided for the guidance of the ship's master⁷, the owner and master of the ship are each guilty of an offence and liable, on summary conviction, to a fine not exceeding the statutory maximum⁸; and on conviction on indictment, to a fine⁹.

Where a ship has been so loaded that the appropriate load line¹⁰ on each side of the ship either: (1) is submerged¹¹; or (2) would be submerged if the ship were in salt water and had no list¹², that amounts to an offence by both the owner and master and is punishable¹³, on summary conviction, by a fine not exceeding the statutory maximum and by such additional fine, subject to specified limits¹⁴, as the court thinks fit to impose, having regard to the extent to which the earning capacity of the ship was increased by reason of the contravention¹⁵; and, on conviction on indictment, by a fine¹⁶. If a ship which is so loaded¹⁷ proceeds to sea¹⁸, that is an offence by the master and by any other person who, having reason to believe that the ship is so loaded, sends or is party to sending the ship to sea, punishable¹⁹, on summary conviction, by a fine not exceeding the statutory maximum; and, on conviction on indictment, by a fine²⁰.

Any contravention of the duty of the owner and master to keep the ship marked with the appropriate marks²¹ is an offence by both the owner and the master punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale²²; and any contravention by any person of the requirement not to conceal, remove, alter, deface or obliterate the marks without the authority of the Assigning Authority²³, is an offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale²⁴.

Any contravention of the requirement, subject to any exemption, not to proceed, or attempt to proceed, to sea unless the appropriate certificate²⁵ is in force in respect of the ship²⁶ is an offence by the master punishable, on summary conviction, by a fine not exceeding the statutory maximum; and, on conviction on indictment, by a fine²⁷.

Any contravention of the requirements relating to publication of the load line certificate or notification of draughts²⁸ is an offence by both the master and owner punishable, on summary conviction, by a fine not exceeding level 3 on the standard scale²⁹.

Any ship which proceeds or attempts to proceed to sea without being duly surveyed and marked³⁰ may be detained until it has been so surveyed and marked³¹; any ship which does not comply with the conditions of assignment applicable to it is liable to be detained until it complies³²; and any ship which is so loaded that the appropriate load line on each side of the ship either is submerged (or would be submerged if the ship were in salt water and had no list)³³ may³⁴ be detained until it ceases to be so loaded³⁵. In any case where a ship is liable to be detained in this way, provision is made in relation to enforcement³⁶; and provisions relating to compensation have effect³⁷.

¹ le subject to any exemption conferred under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241 (as to which see PARA 672): see reg 6(1); and PARA 673. As to the meaning of 'sea' see PARA 671 note 6.

2 Ie in contravention of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(1)(a) (see PARA 673): see reg 35(1). As to the meaning of 'load line' see PARA 671 note 1. The text refers to a requirement for a ship to be surveyed in accordance with the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241: see reg 6(1)(a); and PARA 673. As to the surveys so required see PARA 675.

3 Ie in contravention of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(1)(b) (see PARA 673): see reg 35(1). As to the meaning of 'appropriate marks' for these purposes see PARA 673 note 4.

4 Ie in contravention of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(1)(c) (see PARA 673): see reg 35(1). As to the meaning of 'conditions of assignment' for these purposes see PARA 673 note 5. As to compliance with the applicable conditions of assignment of freeboards see PARA 674.

5 Ie the information required by the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 32 (as to which see PARA 682): see reg 6(1)(d); and PARA 673.

6 Ie the information required by the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 33 (as to which see PARA 682): see reg 6(1)(d); and PARA 673.

7 Ie in contravention of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(1)(d) (see PARA 673): see reg 35(1).

8 As to the meaning of 'statutory maximum' see PARA 1099.

9 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 35(1). The ship may be liable to detention also: see the text and notes 30-31.

10 As to the meaning of 'appropriate load line' for these purposes see PARA 673 note 4.

11 Ie in contravention of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(3)(a) (see PARA 673): see reg 35(2).

12 Ie in contravention of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(3)(b) (see PARA 673): see reg 35(2).

13 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 35(2) (amended by SI 2000/1335). Where a person is charged with an offence under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 35(2), it is a defence to prove that the contravention was due solely to deviation or delay and that the deviation or delay was caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer (if any) could have prevented or forestalled: reg 35(5).

14 Any additional fine imposed under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 35(2)(a) must not exceed £1,000 for each complete centimetre by which, in a case falling within reg 6(3)(a) (see head (1) in the text), the appropriate load line on each side of the ship was submerged, or, in a case falling within reg 6(3)(b) (see head (2) in the text), the appropriate load line on each side of the ship would have been submerged: reg 35(3).

15 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 35(2)(a).

16 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 35(2)(b). The ship may be liable to detention also: see the text and notes 33-35.

17 Ie which is loaded in contravention of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(3): see reg 6(4); and PARA 673.

18 Ie in contravention of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(4) (see PARA 673): see reg 35(4).

19 Ie without prejudice to any fine liable in respect of an offence under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 35(2) (see the text and notes 10-16): see reg 35(4).

20 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 35(4).

21 Ie any contravention of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 23(a) (see PARA 681): see reg 35(6)(a) (amended by SI 2000/1335).

22 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 35(6)(a) (as amended: see note 21). It is a defence for a person charged under reg 35(6) to show he had reasonable excuse for the contravention: reg 35(6)(c).

23 In any contravention of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 23(b) (see PARA 681): see reg 35(6)(b) (amended by SI 2000/1335). As to the meaning of 'Assigning Authority' see PARA 674 note 1.

24 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 35(6)(b) (as amended: see note 23). As to defences for a person charged under reg 35(6) see note 22.

25 As to the meaning of 'appropriate certificate' for these purposes see PARA 675 note 6.

26 In any contravention of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 9(4) (see PARA 676): see reg 35(7).

27 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 35(7).

28 In any contravention of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 13 (see PARA 680): see reg 35(8).

29 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 35(8).

30 In contravention of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(1) (see PARA 673): see reg 37(1).

31 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 37(1). See also the text and notes 1-9.

32 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 37(2). See also the text and notes 1-9.

33 In contravention of the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 6(3) (see PARA 673): see reg 37(3) (amended by SI 2000/1335).

34 In without prejudice to any proceedings under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 35 (see the text and notes 17-20): see reg 37(3) (as amended: see note 33).

35 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 37(3) (as amended: see note 33).

36 In any case where a ship is liable to be detained under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, the Merchant Shipping Act 1995 s 284 (enforcing detention of ships) (see PARA 1253) has effect in relation to the ship, subject to modifications: see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 37(4) (amended by SI 2000/1335).

37 The provisions of the Merchant Shipping Act 1995 ss 96, 97 (arbitration and compensation in connection with detention notices) (see PARAS 1205, 1206) apply in relation to a detention notice issued pursuant to the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 37, as they apply in relation to detention notices issued pursuant to the Merchant Shipping Act 1995 s 95(3) (power to detain dangerously unsafe ship) (see PARA 1204) but with modifications: see the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 37(5) (amended by SI 2000/1335).

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1190. Offences and penalties in relation to load line certificates and surveys.

No person may:

- 1390 (1) intentionally alter a certificate referred to in the provisions relating to load lines¹;
- 1391 (2) falsely make a certificate referred to in those provisions²;
- 1392 (3) in connection with any survey required by those provisions³, knowingly or recklessly furnish false information⁴;
- 1393 (4) with intent to deceive, use, lend, or allow to be used by another, a certificate referred to in those provisions⁵; or
- 1394 (5) fail to surrender, as directed by the Secretary of State⁶, a certificate that the Secretary of State requires to be surrendered⁷.

Contravention of any of heads (1) to (5) above is an offence punishable, on summary conviction, by a fine not exceeding the statutory maximum⁸, or, on conviction on indictment, by imprisonment for a term not exceeding six months, or a fine (or both)⁹.

1 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 36(1)(a). Head (1) in the text refers to a certificate referred to in the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241 (see PARA 671 et seq): see reg 36(1)(a).

2 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 36(1)(b).

3 As to the surveys so required see PARA 675.

4 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 36(1)(c).

5 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 36(1)(d).

6 As to the Secretary of State see PARA 38.

7 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 36(1)(e) (substituted by SI 2000/1335). Head (5) in the text refers to a certificate required to be surrendered under the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 11(6) (see PARA 679): see reg 36(1)(e) (as so substituted).

8 As to the meaning of 'statutory maximum' see PARA 1099.

9 Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241, reg 36(2).

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1191. Failure to observe controls imposed in relation to temporary exclusion zones.

If a ship¹ enters or remains in a temporary exclusion zone² or a part of such a zone in contravention³ of the restrictions in force⁴, its owner and its master⁵ are each guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding £50,000⁶. It is, however, a defence for a person charged with such an offence⁷ to prove that the existence or area of the temporary exclusion zone was not, and would not on reasonable inquiry have become, known to the master⁸.

1 As to the meaning of 'ship' see PARA 229.

2 As to the meaning of 'temporary exclusion zone' see PARA 684.

3 As to the meaning of 'contravention' see PARA 50 note 3.

4 I.e. in contravention of the Merchant Shipping Act 1995 s 100B(1) (see PARA 685) or s 100B(3) (see PARA 685): see s 100B(6) (s 100B added by the Merchant Shipping and Maritime Security Act 1997 s 1).

5 As to the meaning of 'master' see PARA 424.

6 Merchant Shipping Act 1995 s 100B(6) (as added: see note 4). As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

7 I.e. under the Merchant Shipping Act 1995 s 100B (see PARA 685): see s 100B(7) (as added: see note 4).

8 Merchant Shipping Act 1995 s 100B(7) (as added: see note 4).

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1192. Interference with, or failure to comply with, safety directions or action taken in lieu.

A person to whom a safety direction is given¹ must comply with the direction², and he commits an offence if he fails so to comply³.

If a person intentionally obstructs another person who is:

- 1395 (1) acting on behalf of the Secretary of State⁴ in connection with the giving of a safety direction⁵;
- 1396 (2) complying with such a direction⁶; or
- 1397 (3) taking action in lieu of such a direction⁷,

that first-named person commits an offence⁸.

A person guilty of either such offence⁹ is liable, on summary conviction, to a fine not exceeding £50,000 or, on conviction on indictment, to a fine¹⁰.

However, proceedings for such an offence¹¹ may be brought only by or with the consent of the Attorney-General¹², or by or with the authority of the Secretary of State¹³.

1 le a person to whom a direction is given under the Merchant Shipping Act 1995 s 108A(1), Sch 3A (see PARA 686): see Sch 3A para 5 (s 108A, Sch 3A added by the Marine Safety Act 2003 s 1(1), (2), Sch 1).

2 See the Merchant Shipping Act 1995 Sch 3A para 5(a); and PARA 686.

3 Merchant Shipping Act 1995 Sch 3A para 6(1) (as added: see note 1). It is a defence for a person charged with an offence under Sch 3A para 6(1) to prove that he tried as hard as he could to comply with the relevant direction, or that he reasonably believed that compliance with the direction would involve a serious risk to human life: Sch 3A para 6(2) (as so added).

4 As to the Secretary of State see PARA 38.

5 Merchant Shipping Act 1995 Sch 3A para 7(a) (as added: see note 1). The text refers to the giving of a direction under Sch 3A (see PARA 686): see Sch 3A para 7(a) (as so added).

6 Merchant Shipping Act 1995 Sch 3A para 7(b) (as added: see note 1).

7 Merchant Shipping Act 1995 Sch 3A para 7(c) (as added: see note 1). Head (3) in the text refers to a person who is acting by virtue of Sch 3A para 4 (see PARA 687): see Sch 3A para 7(c) (as so added).

8 Merchant Shipping Act 1995 Sch 3A para 7 (as added: see note 1).

9 le under the Merchant Shipping Act 1995 Sch 3A para 6 (see the text and notes 1-3) or under Sch 3A para 7 (see the text and notes 4-8): see Sch 3A para 8 (as added: see note 1).

10 Merchant Shipping Act 1995 Sch 3A para 8 (as added: see note 1). As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

- 11 le under the Merchant Shipping Act 1995 Sch 3A para 6 (see the text and notes 1-3) or under Sch 3A para 7 (see the text and notes 4-8): see Sch 3A para 9 (as added: see note 1).
- 12 As to the Attorney-General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.
- 13 Merchant Shipping Act 1995 Sch 3A para 9 (as added: see note 1).

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1193. Failure to comply with requirements imposed in relation to ship and port facility security.

Any person who, without reasonable excuse, fails to comply with a requirement imposed on him¹ to furnish to a duly authorised officer² inspecting a ship or a port facility³ such information as that officer may consider necessary for the purpose for which the inspection is carried out⁴, or any person who, in furnishing any information so required makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular⁵, commits an offence⁶, and is liable, on summary conviction, to a fine not exceeding the statutory maximum⁷ or, on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years⁸.

A person who:

- 1398 (1) intentionally obstructs a duly authorised officer acting in the exercise of a power duly conferred⁹ upon him¹⁰; or
- 1399 (2) falsely pretends to be a duly authorised officer¹¹,

commits an offence¹². A person guilty of an offence under head (1) above is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years¹³. A person guilty of an offence under head (2) above is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale¹⁴.

A person who, without reasonable excuse, fails to comply with a requirement of a detention notice¹⁵, served in respect of a ship pursuant to control and compliance measures¹⁶, commits an offence¹⁷, and is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years¹⁸.

Any person who, without reasonable excuse, fails to comply with an enforcement notice¹⁹ served on him is guilty of an offence²⁰; and is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine²¹.

1 Ie under the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(2)(d) (as to which see PARA 710): see reg 6(5)(a).

2 As to the meaning of 'duly authorised officer' for these purposes see PARA 710 note 1.

3 Ie under the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 7 (as to which see PARA 710).

4 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(5)(a).

5 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(5)(b).

6 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(5).

7 As to the meaning of 'statutory maximum' see PARA 1099.

8 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 6(6) (amended by SI 2005/1434).

9 Ie a power conferred by EC Regulation 725/2004 of the European Parliament and of the Council of 31 March 2004 (OJ L129, 29.04.2004, p 6) on enhancing ship and port facility security (as to which see PARA 708) or by the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495 (as to which see PARA 708 et seq): see reg 12(1)(a).

10 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 12(1)(a).

11 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 12(1)(b).

12 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 12(1).

13 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 12(2) (amended by SI 2005/1434).

14 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 12(3). As to the meaning of 'standard scale' see PARA 1099.

15 As to the meaning of 'detention notice' see PARA 713.

16 Ie pursuant to the control and compliance measures specified in the SOLAS Convention Ch XI-2 reg 9: see the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(1); and PARA 713. As to the meaning of 'SOLAS Convention' see PARA 708 note 5.

17 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(8).

18 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 8(9) (amended by SI 2005/1434).

19 As to the meaning of 'enforcement notice' see PARA 714.

20 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 15(1) (amended by SI 2005/1434).

21 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 15(1) (as amended: see note 20). Where a person is convicted of an offence under reg 15(1) and if without reasonable excuse the failure in respect of which he was convicted is continued after the conviction, he is guilty of a further offence and liable, on summary conviction, to a fine not exceeding £100 for each day on which the failure continues: reg 15(2).

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1194. Penalties for unauthorised presence in restricted areas of ship or port facility.

A person must not:

- 1400 (1) go onto or into any part of a restricted area¹ of a ship except with the permission of the master² or the ship security officer³ or a person acting on their behalf, and in accordance with any conditions subject to which that permission is for the time being granted⁴; or
- 1401 (2) remain in any part of such a restricted area after being requested to leave by the master or the ship security officer or a person acting on their behalf⁵.

A person who contravenes either prohibition set out in heads (1) and (2) above without lawful authority or reasonable excuse is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale⁶. However, a person who contravenes head (1) above is not guilty of an offence unless it is proved that, at the material time, notices stating that the area concerned was a restricted area were posted so as to be readily seen and read by persons entering the area⁷.

A constable⁸ or the master or the ship security officer (or a person acting on behalf of the master or the ship security officer) may use such force as is reasonable in the circumstances to remove from a restricted area a person remaining in it in contravention of head (2) above⁹.

A person must not:

- 1402 (a) go onto or into any part of a restricted area of a port facility except with the permission of the port facility security officer¹⁰ or a person acting on his behalf, and in accordance with any conditions subject to which that permission is for the time being granted¹¹; or
- 1403 (b) remain in any part of such a restricted area after being requested to leave by the port facility security officer or a person acting on his behalf¹².

A person who contravenes either prohibition set out in heads (a) and (b) above without lawful authority or reasonable excuse is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale¹³. However, a person who contravenes head (1) above is not guilty of an offence unless it is proved that, at the material time, notices stating that the area concerned was a restricted area were posted so as to be readily seen and read by persons entering the area¹⁴.

A constable or the port facility security officer (or a person acting on behalf of the port facility security officer) may use such force as is reasonable in the circumstances to remove from a restricted area a person remaining in it in contravention of head (b) above¹⁵.

¹ For these purposes, 'restricted area' means an area in a ship or a port facility that is identified as such in a ship security plan or port facility security plan: Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(1). As to the meaning of 'port facility' see PARA 709 note 12. As to the port facility security plan see PARA 710 note 2. As to the purpose of the Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, see PARA 708.

- 2 As to the meaning of 'master' see PARA 710 note 2.
- 3 As to the meaning of 'ship security officer' see PARA 710 note 2.
- 4 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 10(1)(a).
- 5 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 10(1)(b).
- 6 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 10(3) (amended by SI 2005/1434). As to the meaning of 'standard scale' see PARA 1099.
- 7 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 10(3A) (added by SI 2005/1434).
- 8 For these purposes, 'constable' includes any person having the powers and privileges of a constable: Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 2(1).
- 9 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 10(4).
- 10 As to the meaning of 'port facility security officer' see PARA 710 note 2.
- 11 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 11(1)(a).
- 12 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 11(1)(b).
- 13 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 11(3) (amended by SI 2005/1434).
- 14 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 11(3A) (added by SI 2005/1434).
- 15 Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, reg 11(4).

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1195. Failure to comply with requirements imposed in relation to port state control.

If there is any contravention of a direction¹, made where deficiencies hazardous to safety, health or the environment are confirmed or revealed by inspection¹, in respect of a ship², the owner³ or master of the ship is guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding the statutory maximum⁴.

Where a ship:

- 1404 (1) which is subject to an expanded inspection⁵, fails⁶ to communicate the necessary information to the Maritime and Coastguard Agency⁷ before each call at a port in the United Kingdom⁸;
- 1405 (2) fails⁹ to proceed to the nearest appropriate port in order to rectify the lack of a functioning voyage data recorder whose use is compulsory, or where a ship fails to comply with a requirement¹⁰ that any such deficiency be rectified within 30 days¹¹;
- 1406 (3) fails to proceed to the nearest appropriate repair yard available¹² where deficiencies hazardous to safety, health or the environment have been confirmed or revealed by inspection but could not be rectified in the port of inspection¹³; or
- 1407 (4) enters a port where a prohibition on doing so applies¹⁴,

the owner and master are each guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding the statutory maximum¹⁵.

If a person obstructs an inspector¹⁶ or any person assisting the inspector, he is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale¹⁷.

Any pilot¹⁸ who, or, as the case may be, any port authority¹⁹ which fails²⁰ to report deficiencies which may prejudice the safe navigation of a ship, or which may pose a threat of harm to the marine environment, is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale²¹.

It is a defence for a person charged with any such offence²² to prove that the person charged took all reasonable steps to avoid committing the offence²³.

1 le a direction made pursuant to the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(2) (see PARA 698): see the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 18(1).

2 As to the meaning of 'ship' see PARA 690 note 2. As to the ships to which the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18), applies generally see PARA 690.

3 As to the meaning of 'owner' see PARA 694 note 8.

4 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 18(1). As to the meaning of 'statutory maximum' see PARA 1099.

- 5 As to the meaning of 'expanded inspection' see PARA 692 note 5.
- 6 Ie in contravention of the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7(3) (see PARA 694): see reg 18(2)(a) (substituted by SI 2003/1636).
- 7 As to the Maritime and Coastguard Agency see PARA 56.
- 8 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 18(2)(a) (as substituted: see note 6). As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 9 Ie in contravention of the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(3) (c) (see PARA 698): see reg 18(2)(b) (substituted by SI 2003/1636).
- 10 Ie as specified in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 9(3)(c) (see PARA 698): see reg 18(2)(b) (as substituted: see note 9).
- 11 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 18(2)(b) (as substituted: see note 9).
- 12 Ie as specified in the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 13(1) (see PARA 701): see reg 18(2)(c) (added by SI 2003/1636).
- 13 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 18(2)(c) (as added: see note 12).
- 14 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 18(2)(d) (added by SI 2003/1636). The text refers to a ship which enters a port in contravention of the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 7B (see PARA 696), reg 9A(3) (see PARA 699) or reg 13(5) (see PARA 701): see reg 18(2)(d) (as so added).
- 15 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 18(2).
- 16 As to the meaning of 'inspector' see PARA 690 note 18.
- 17 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 18(3). As to the meaning of 'standard scale' see PARA 1099.
- 18 As to the meaning of 'pilot' for these purposes see PARA 703 note 1.
- 19 As to the meaning of 'port authority' for these purposes see PARA 703 note 5.
- 20 Ie any pilot who contravenes the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 15(1) (see PARA 703) or any port authority which contravenes reg 15(1) or (3) (see PARA 703): see reg 18(4).
- 21 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 18(4).
- 22 Ie under the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 18 (see the text and notes 1-21): see reg 18(5).
- 23 Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, reg 18(5).

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1196. Contravention of provisions governing distress signals and prevention of collisions.

Where any of the provisions governing distress signals and the prevention of collisions¹ is contravened, the owner of the vessel, the master and any person for the time being responsible for the conduct of the vessel are each guilty of an offence² and liable, on conviction on indictment, to imprisonment for a term not exceeding two years and a fine, or on summary conviction³:

- 1408 (1) in the case of any infringement of the duty to proceed with traffic flow in lanes of separation schemes⁴, by a fine not exceeding £50,000⁵; and
- 1409 (2) in any other case, by a fine not exceeding the statutory maximum⁶.

It is a defence for any person so charged⁷ to show that he took all reasonable precautions to avoid the commission of the offence⁸.

In any case where a ship does not comply with the requirements of the provisions governing distress signals and the prevention of collisions⁹, the ship¹⁰ is liable to be detained¹¹.

1. In any of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75 (as to which see PARA 716 et seq): see reg 6(1).

2. Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 6(1). See *R v Goodwin* [2005] EWCA Crim 3184, [2006] 2 All ER 519 (because an offence under the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, carries the same maximum penalty as the Merchant Shipping Act 1995 s 58 (conduct endangering ships, structures or individuals) (see PARA 1159), where allegations are made of conduct which infringes the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, it would seem simpler and more appropriate to charge that offence rather than to allege breach of the Merchant Shipping Act 1995 s 58).

3. Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 6(1).

4. In the case of any infringement of the International Regulations for Preventing Collisions at Sea (London, 20 October 1972; TS 77 (1977); Cmnd 6962) r 10(b)(i) (see PARA 730), being an offence corresponding to an offence under the Merchant Shipping Act 1894 s 419(2) (repealed): see the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 6(1)(a). As to the offence provided for under the Merchant Shipping Act 1894 s 419(2) (repealed) see *Taylor v O'Keefe, The Nordic Clansman* [1984] 1 Lloyd's Rep 31, DC (master failing to comply with traffic separation scheme; decided under the Merchant Shipping Act 1894 s 419).

5. Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 6(1)(a).

6. Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 6(1)(b). As to the meaning of 'statutory maximum' see PARA 1099.

7. In charged under the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see reg 6(2).

8. Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 6(2).

9 It does not comply with the requirements of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75 (as to which see [PARA 716](#) et seq): see [reg 7](#).

10 As to the meaning of 'ships' see [PARA 716](#) note 3.

11 Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, [reg 7](#). The Merchant Shipping Act 1995 s 284 (which relates to enforcing the detention of a ship) (see [PARA 1253](#)) has effect in relation to the ship, subject to modifications: see the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, [reg 7](#).

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1197. Master's failure to comply with his duties to assist ships etc in distress or persons in danger.

If the master¹ of a ship² fails without reasonable excuse to comply with the duty imposed on him³ to assist the other ship in a case of collision, he is liable⁴:

1410 (1) in the case of a failure to render to the other ship, its master, crew and passengers, if any, such assistance as may be practicable and necessary to save them from any danger caused by the collision, or to stay by the other ship until he has ascertained that it has no need of further assistance⁵, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £50,000 (or to both)⁶;

1411 (2) in the case of a failure to give to the master of the other ship the name of his own ship and also the names of the ports⁷ from which it comes and to which it is bound⁸, on conviction on indictment, to a fine or, on summary conviction, to a fine not exceeding the statutory maximum⁹.

In either case mentioned in heads (1) and (2) above, if the master of the ship is a certified officer, an inquiry into his conduct may be held¹⁰ and his certificate cancelled or suspended¹¹.

If the master of a ship fails to comply with the duty imposed on him¹² to assist an aircraft in distress, he is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or to both)¹³.

The master of a vessel¹⁴ who fails to comply with the duty imposed on him under the International Convention on Salvage 1989¹⁵ to render assistance to any person in danger of being lost at sea¹⁶ commits an offence¹⁷ and is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or to both¹⁸, or, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both¹⁹.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'ship' see PARA 229.

3 Ie by the provisions of the Merchant Shipping Act 1995 s 92 (see PARA 756): see s 92(4). As to the application of the Merchant Shipping Act 1995 s 92 see PARA 756 note 2.

4 Merchant Shipping Act 1995 s 92(4).

5 Ie in the case of failure to comply with the Merchant Shipping Act 1995 s 92(1)(a) (see PARA 756): see s 92(4)(a).

6 Merchant Shipping Act 1995 s 92(4)(a). As to the time limit for summary offences see PARA 1100; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

7 As to the meaning of 'port' see PARA 46 note 12.

8 Ie in the case of failure to comply with the Merchant Shipping Act 1995 s 92(1)(b) (see PARA 756): see s 92(4)(b).

9 Merchant Shipping Act 1995 s 92(4)(b). As to the meaning of 'statutory maximum' see PARA 1099.

10 As to inquiries into the conduct of an officer see PARA 511 et seq.

11 Merchant Shipping Act 1995 s 92(4).

12 Ie by the provisions of the Merchant Shipping Act 1995 s 93(1)-(5) (see PARA 448): see s 93(6). As to the application of the Merchant Shipping Act 1995 s 93 see PARA 448 note 1.

13 Merchant Shipping Act 1995 s 93(6).

14 As to the meaning of 'vessel' under the Convention see PARA 893 note 3.

15 Ie the International Convention on Salvage 1989 (London, 28 April 1989; Cm 1526): see PARA 878. This Convention is referred to in the Merchant Shipping Act 1995 as the 'Salvage Convention' (see PARA 891 note 1), and the relevant provisions of the Salvage Convention which have effect in the United Kingdom are set out in the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I (arts 1-27) (see PARA 891 note 3). However, for the purposes of s 224(2), Sch 11 Pt II (paras 1-7) (provisions having effect in connection with the Convention) (see PARA 920 et seq) the Convention as set out in the Merchant Shipping Act 1995 Sch 11 Pt I is referred to simply as the 'Convention'; and any reference to a numbered article is a reference to the article of the Convention which is so numbered: see the Merchant Shipping Act 1995 Sch 11 Pt II para 1.

16 Ie the duty imposed on him by the International Convention on Salvage 1989 art 10(1) (see PARA 901): see the Merchant Shipping Act 1995 Sch 11 Pt II para 3(1).

17 Merchant Shipping Act 1995 Sch 11 Pt II para 3(1).

18 Merchant Shipping Act 1995 Sch 11 Pt II para 3(1)(b).

19 Merchant Shipping Act 1995 Sch 11 Pt II para 3(1)(a).

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1198. Penalties relating to the reporting and investigation of marine accidents.

A person is guilty of an offence if¹:

1412 (1) he fails without reasonable cause to report an accident² pursuant to the duty imposed upon him so to do³, being one of the following persons⁴:

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5. (a) the master (or, if he has not survived, the senior surviving officer)⁵;
6. (b) the ship's owner⁶ (unless he has ascertained to his satisfaction that the master or senior surviving officer has reported the accident in accordance with head (a) above)⁷;
7. (c) in the case of an accident within or adjacent to the limits of any harbour, the harbour authority for that harbour⁸;
8. (d) in the case of an accident on any inland waterway in the United Kingdom, the person, authority or body having responsibility for that waterway⁹;

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1413 (2) being a master or ship's owner, he fails without reasonable cause to comply with the duty imposed¹⁰ to, so far as is reasonably practicable, ensure that the circumstances of every serious injury¹¹ are examined and, within 14 days, to provide the Chief Inspector¹² with a report giving the findings of such examination and stating any measures taken or proposed to prevent a recurrence¹³;

1414 (3) being a person referred to in head (1) above, he fails without reasonable cause to provide such information¹⁴ as the Chief Inspector considers necessary concerning the accident and any remedial action taken as a result¹⁵; or

1415 (4) he falsely claims to have any additional information or new evidence pertaining to any accident or serious injury¹⁶;

and such a person is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale¹⁷.

If any person fails without reasonable cause to comply with any requirement, duty or prohibition relating to the preservation of evidence¹⁸, he is guilty of an offence and liable, on summary conviction, to a fine not exceeding the statutory maximum¹⁹ and, on conviction on indictment, to a fine²⁰.

If any person without reasonable cause discloses or permits to be disclosed any information in contravention of the prohibition on doing so in relation to²¹:

1416 (i) the names, addresses or any other details of anyone who has given evidence to an inspector²²; or

1417 (ii) information which has been furnished to him through receipt of a draft copy of the report²³, or which has otherwise been furnished to him by or on behalf of the Chief Inspector in advance of the publication of a report and whose confidentiality is protected²⁴ from disclosure²⁵,

or if any person makes available for purposes other than the investigation²⁶:

- 1418 (A) any declarations or statements taken from persons by an inspector or supplied to him in the course of his investigation, together with any notes or voice recordings of interviews²⁷;
- 1419 (B) medical or confidential information regarding persons involved in an accident²⁸;
- 1420 (C) any report²⁹ concerning the circumstances of an accident or serious injury³⁰;
- 1421 (D) copies of the report other than the final report³¹,

he is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale³².

1 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 18(1). As to the application of the regulations generally see PARA 847.

2 As to the meaning of 'accident' see PARA 846.

3 I.e. as required by the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6 (see PARA 849): see reg 18(1)(a).

4 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 18(1)(a). Heads (1)(a) to (1)(d) in the text refer to the persons mentioned in reg 6(1), (2)(a), (2)(b) (see PARA 849): see reg 18(1)(a).

5 I.e. a person mentioned in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(1)(a) (see PARA 849): see reg 18(1)(a). As to the meaning of 'senior surviving officer' see PARA 849 note 4.

6 As to the meaning of references to the 'owner' see PARA 849 note 5.

7 I.e. a person mentioned in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(1)(b) (see PARA 849): see reg 18(1)(a).

8 I.e. a person mentioned in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(2)(a) (see PARA 849): see reg 18(1)(a).

9 I.e. a person mentioned in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(2)(b) (see PARA 849): see reg 18(1)(a).

10 I.e. fails without reasonable cause to comply with the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(5) (see PARA 849): see reg 18(1)(b).

11 As to the meaning of 'serious injury' for these purposes see PARAS 846, 847.

12 As to the meaning of 'Chief Inspector' see PARA 847 note 4.

13 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 18(1)(b).

14 I.e. as required by the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 7(3) (see PARA 850): see reg 18(1)(c).

15 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 18(1)(c).

16 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 18(1)(d).

17 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 18(1). As to the meaning of 'standard scale' see PARA 1099.

18 I.e. in accordance with the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 9(1), (2) or (5)-(7) (see PARA 851): see reg 18(2).

19 As to the meaning of 'statutory maximum' see PARA 1099.

20 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 18(2).

21 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 18(3). Head (i) in the text refers to the disclosure of information in contravention of reg 12(1) (see PARA 854) and head (ii) in the text refers to the disclosure of information in contravention of reg 13(6) (see PARA 853): see reg 18(3).

22 Ie if information is disclosed in contravention of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(1) (see PARA 854): see reg 18(3).

23 Ie information which has been furnished to him pursuant to the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(4) (see PARA 853): see reg 13(6).

24 Ie by the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12 (see PARA 854): see reg 13(6).

25 Ie if information is disclosed in contravention of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 13(6) (see PARA 853): see reg 18(3).

26 Ie in contravention of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(2) (see PARA 854): see reg 18(3).

27 Ie declarations or statements as specified in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(2)(a) (see PARA 854): see reg 18(3).

28 Ie medical or confidential information as specified in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(2)(b) (see PARA 854): see reg 18(3).

29 Ie any report made under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 6(4), (5) (see PARA 849): see reg 12(2)(c).

30 Ie any report as specified in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(2)(c) (see PARA 854): see reg 18(3).

31 Ie as specified in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 12(2)(d) (see PARA 854): see reg 18(3).

32 Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, SI 2005/881, reg 18(3).

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1199. Offences in connection with passenger ships.

A person commits an offence if, in relation to a ship¹ for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate, as the case may be, issued under or recognised by safety regulations², he does any of the following things³, that is to say:

- 1422 (1) if, being drunk or disorderly, he has been on that account refused admission to the ship by the owner or any person in his employment, and, after having the amount of his fare, if he has paid it, returned or tendered to him, nevertheless persists in attempting to enter the ship⁴;
- 1423 (2) if, being drunk or disorderly on board the ship, he is requested by the owner or any person in his employment to leave the ship at any place in the United Kingdom⁵ at which he can conveniently do so, and, after having the amount of his fare, if he has paid it, returned or tendered to him, does not comply with the request⁶;
- 1424 (3) if, on board the ship, after warning by the master⁷ or other officer thereof, he molests or continues to molest any passenger⁸;
- 1425 (4) if, after having been refused admission to the ship by the owner or any person in his employment on account of the ship being full, and having had the amount of his fare, if he has paid it, returned or tendered to him, he nevertheless persists in attempting to enter the ship⁹;
- 1426 (5) if, having gone on board the ship at any place, and being requested, on account of the ship being full, by the owner or any person in his employment to leave the ship before it has left that place, and having had the amount of his fare, if he has paid it, returned or tendered to him, he does not comply with that request¹⁰;
- 1427 (6) if, on arriving in the ship at a point to which he has paid his fare, he knowingly and intentionally refuses or neglects to leave the ship¹¹; and
- 1428 (7) if, on board the ship he fails, when requested by the master or other officer thereof, either to pay his fare or show such ticket or other receipt, if any, showing the payment of his fare, as is usually given to persons travelling by and paying their fare for the ship¹²;

but his liability in respect of any such offence does not prejudice the recovery of any fare payable by him¹³.

A person commits an offence if, on board any ship for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate, as the case may be, issued under or recognised by safety regulations, he intentionally does or causes to be done anything in such a manner as to¹⁴:

- 1429 (a) obstruct or damage any part of the machinery or equipment of the ship¹⁵;
or
- 1430 (b) obstruct, impede or molest the crew, or any of them, in the navigation or management of the ship, or otherwise in the execution of their duty on or about the ship¹⁶.

The master or other officer of any ship for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate, as the case may be, issued under or recognised by safety regulations, and all persons called by him to his assistance, may, without any warrant, detain any person who commits any such offence¹⁷ and whose name and address are unknown to the master or officer, and deliver that person to a constable¹⁸.

A person guilty of any such offence¹⁹ is liable, on summary conviction, to a fine not exceeding level 2 on the standard scale²⁰; and if any person commits any such offence²¹ and, on the application of the master of the ship, or any other person in the employment of the owner thereof, refuses to give his name and address, or gives a false name or address, that person is liable, on summary conviction, to a fine not exceeding level 2 on the standard scale²².

1 As to the meaning of 'ship' see PARA 229.

2 As to the meaning of 'safety regulations' see PARA 591.

3 See the Merchant Shipping Act 1995 s 101(1), (6).

4 Merchant Shipping Act 1995 s 101(1)(a).

5 As to the meaning of 'United Kingdom' see PARA 17 note 3.

6 Merchant Shipping Act 1995 s 101(1)(b).

7 As to the meaning of 'master' see PARA 424.

8 Merchant Shipping Act 1995 s 101(1)(c).

9 Merchant Shipping Act 1995 s 101(1)(d).

10 Merchant Shipping Act 1995 s 101(1)(e).

11 Merchant Shipping Act 1995 s 101(1)(f).

12 Merchant Shipping Act 1995 s 101(1)(g).

13 Merchant Shipping Act 1995 s 101(1).

14 Merchant Shipping Act 1995 s 101(2), (6).

15 Merchant Shipping Act 1995 s 101(2)(a).

16 Merchant Shipping Act 1995 s 101(2)(b).

17 Ie under the Merchant Shipping Act 1995 s 101(1), (2) (see the text and notes 1-16): see s 101(3), (6).

18 Merchant Shipping Act 1995 s 101(3), (6).

19 Ie under the Merchant Shipping Act 1995 s 101(1), (2) (see the text and notes 1-16): see s 101(4).

20 Merchant Shipping Act 1995 s 101(4). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

21 Ie under the Merchant Shipping Act 1995 s 101(1), (2) (see the text and notes 1-16): see s 101(5).

22 Merchant Shipping Act 1995 s 101(5).

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1200. Stowaways.

If a person, without the consent of the master¹ or of any other person authorised to give it, goes to sea or attempts to go to sea in a United Kingdom ship², he is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale³.

Nothing in the provisions relating to jurisdiction in cases of offences on board ship⁴ is to be taken to limit the jurisdiction of any court in the United Kingdom to deal with such an offence⁵ which has been committed in a country outside the United Kingdom by a person who is not a British citizen⁶.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'United Kingdom ship' see PARA 230; as to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping Act 1995 s 103(1). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

4 Ie nothing in the Merchant Shipping Act 1995 s 281 (see PARA 1105): see s 103(2).

5 Ie under the Merchant Shipping Act 1995 s 103 (see the text and notes 1-3): see s 103(2).

6 Merchant Shipping Act 1995 s 103(2). As to the meaning of 'British citizen' see PARA 19 note 7.

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1201. Unauthorised presence on board ship.

Where a United Kingdom ship¹ or a ship registered in any other country is in a port² in the United Kingdom and a person who is neither in Her Majesty's service nor authorised by law to do so³:

1431 (1) goes on board the ship without the consent of the master⁴ or of any other persons authorised to give it⁵; or

1432 (2) remains on board the ship after being requested to leave by the master, a constable, an officer authorised by the Secretary of State⁶ or an officer of Revenue and Customs⁷,

he is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale⁸.

1 As to the meaning of 'United Kingdom ship' see PARA 230; as to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

2 As to the meaning of 'port' see PARA 46 note 12.

3 Merchant Shipping Act 1995 s 104.

4 As to the meaning of 'master' see PARA 424.

5 Merchant Shipping Act 1995 s 104(a).

6 As to the Secretary of State see PARA 38.

7 Merchant Shipping Act 1995 s 104(b) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.

8 Merchant Shipping Act 1995 s 104. As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1202. Unauthorised persons; offences relating to safety.

Where a person goes to sea in a ship¹ without the consent of the master² or of any other person authorised to give it or is conveyed in a ship³, the statutory provisions which govern offences relating to conduct endangering ships, structures or individuals⁴ and which govern offences relating to concerted disobedience and neglect of duty⁵ apply as if he were a seaman⁶ employed in the ship⁷.

1 As to the meaning of 'ship' see PARA 229. The Merchant Shipping Act 1995 s 106 does not apply to fishing vessels: s 106(3). As to the meaning of 'fishing vessel' see PARA 230 note 9.

The act of going to sea involves a material alteration of position or location, by the act of moving or travelling or proceeding in a ship from one place to another, the other place being the sea: *R v Ayliffe* [2006] 1 Lloyd's Rep 86 (a person who joins a ship which is already at sea does not 'go to sea in a ship' within the meaning of the Merchant Shipping Act 1995 s 106).

2 As to the meaning of 'master' see PARA 424.

3 Ie in pursuance of the Merchant Shipping Act 1995 s 73(5)(b) (see PARA 527): see s 106(1).

4 Ie the Merchant Shipping Act 1995 s 58 (see PARA 1159): see s 106(1). See note 7.

5 Ie the Merchant Shipping Act 1995 s 59 (see PARA 1160): see s 106(1).

6 As to the meaning of 'seaman' see PARA 424.

7 Merchant Shipping Act 1995 s 106(1). However, s 106(1) has effect, in its application to s 58 (see note 4) so far as s 58 applies to ships which are not sea-going ships, with the omission of the words 'goes to sea in a ship' and with the insertion, after the words 'to give it', of the words 'is on board a ship while it is on a voyage or excursion': s 106(2). See note 1.

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B. OFFENCES RELATING TO USE OF UNSAFE SHIPS ETC

1203. Meaning of 'dangerously unsafe ship'.

A ship¹ in port² is³ 'dangerously unsafe' if, having regard to the nature of the service for which it is intended, the ship is, by reason of the following matters⁴, namely:

- 1433 (1) the condition, or the unsuitability for its purposes, of the ship or its machinery or equipment⁵ or any part of the ship or its machinery or equipment⁶;
- 1434 (2) undermanning⁷;
- 1435 (3) overloading or unsafe or improper loading⁸;
- 1436 (4) any other matter relevant to the safety of the ship⁹,

unfit to go to sea¹⁰ without serious danger to human life¹¹.

A ship at sea is¹² 'dangerously unsafe' if, having regard to the nature of the service for which it is being used or is intended, the ship is, by reason of the matters mentioned in heads (1) to (4) above, either¹³:

- 1437 (a) unfit to remain at sea without serious danger to human life¹⁴; or
- 1438 (b) unfit to go on a voyage without serious danger to human life¹⁵.

The matters referred to in heads (1) to (4) above are referred to, in relation to any ship, as 'the matters relevant to its safety'¹⁶.

1 As to the meaning of 'ship' see PARA 229.

2 As to the meaning of 'port' see PARA 46 note 12.

3 As to the purposes of the Merchant Shipping Act 1995 s 95 (see PARA 1204), s 96 (see PARA 1205), s 97 (see PARA 1206) and s 98 (see PARA 1207): see s 94(1) (amended by the Merchant Shipping and Maritime Security Act 1997 s 9, Sch 1 para 1(1), (2)).

4 See the Merchant Shipping Act 1995 s 94(1) (as amended: see note 3).

5 Safety regulations may make provision with respect to ships and their machinery and equipment: see the Merchant Shipping Act 1995 s 85(3)(a), (d); and PARA 591.

6 Merchant Shipping Act 1995 s 94(2)(a).

7 Merchant Shipping Act 1995 s 94(2)(b). As to manning see PARA 490 et seq. Safety regulations may make provision with respect to the manning of ships: see s 85(3)(e); and PARA 591.

8 Merchant Shipping Act 1995 s 94(2)(c). Safety regulations may make provision with respect to loading etc of cargo: see s 85(3)(b); and PARA 591.

9 Merchant Shipping Act 1995 s 94(2)(d).

10 Any reference in the Merchant Shipping Act 1995 ss 95-98 (see also PARAS 1204-1207) to 'going to sea' is to be construed, in a case where the service for which the ship is intended consists of going on voyages or excursions that do not involve going to sea, as a reference to going on such a voyage or excursion: see s 94(3).

- 11 Merchant Shipping Act 1995 s 94(1) (as amended: see note 3).
- 12 le for the purposes of the Merchant Shipping Act 1995 s 95 (see PARA 1204), s 96 (see PARA 1205), s 97 (see PARA 1206) and s 98 (see PARA 1207): see s 94(1A) (added by the Merchant Shipping and Maritime Security Act 1997 Sch 1 para 1(1), (3)).
- 13 Merchant Shipping Act 1995 s 94(1A) (as added: see note 12).
- 14 Merchant Shipping Act 1995 s 94(1A)(a) (as added: see note 12).
- 15 Merchant Shipping Act 1995 s 94(1A)(b) (as added: see note 12).
- 16 Merchant Shipping Act 1995 s 94(2).

UPDATE

1203 Meaning of 'dangerously unsafe ship'

NOTE 3--See *Club Cruise Entertainment and Travelling Services Europe BV v Department for Transport, The Van Gogh* [2008] EWHC 2794 (Comm), [2009] 1 All ER (Comm) 955.

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1204. Power to detain dangerously unsafe ship.

Where a ship¹ which is:

- 1439 (1) in a port² in the United Kingdom³; or
- 1440 (2) at sea in United Kingdom waters⁴,

appears to a relevant inspector⁵ to be a dangerously unsafe ship⁶, the ship may be detained⁷. The power of detention so conferred⁸ is exercisable in relation to foreign ships⁹ as well as United Kingdom ships¹⁰, although the power of detention conferred by head (2) above is not exercisable in relation to a qualifying foreign ship¹¹ while the ship is exercising either the right of innocent passage¹², or the right of transit passage through straits used for international navigation¹³.

The officer detaining the ship must serve on the master¹⁴ of the ship a detention notice¹⁵ which must:

- 1441 (a) state that the relevant inspector is of the opinion that the ship is a dangerously unsafe ship¹⁶;
- 1442 (b) specify the matters which, in the relevant inspector's opinion, make the ship a dangerously unsafe ship¹⁷; and
- 1443 (c) require the ship to comply with the terms of the notice until it is released by a competent authority¹⁸.

In the case of a ship which is not a British ship¹⁹, the officer detaining the ship must cause a copy of the detention notice to be sent as soon as practicable to the nearest consular officer for the country to which the ship belongs²⁰.

1 As to the meaning of 'ship' see PARA 229.

2 As to the meaning of 'port' see PARA 46 note 12.

3 Merchant Shipping Act 1995 s 95(1)(a) (s 95(1) substituted by the Merchant Shipping and Maritime Security Act 1997 s 9, Sch 1 para 2(1), (2)). As to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping Act 1995 s 95(1)(b) (as substituted: see note 3). As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

5 For these purposes, 'relevant inspector' means any person mentioned in the Merchant Shipping Act 1995 s 258(1)(a), (b) or (c) (see PARA 48): see s 95(5).

6 As to the meaning of 'dangerously unsafe ship' see PARA 1203.

7 Merchant Shipping Act 1995 s 95(1) (as substituted: see note 3). As to the detention of ships see PARA 1253.

8 Ie by the Merchant Shipping Act 1995 s 95(1) (see the text and notes 1-7): see s 95(2).

9 As to the meaning of 'foreign', in relation to a ship, see PARA 19 note 2.

10 Merchant Shipping Act 1995 s 95(2) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 1 para 2(1), (3)). As to the meaning of 'United Kingdom ship' see PARA 230.

11 As to the meaning of 'qualifying foreign ship' see PARA 19.

12 As to the meaning of 'right of innocent passage' see PARA 68 note 10. As to innocent passage generally see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 133.

13 Merchant Shipping Act 1995 s 95(2A) (added by the Merchant Shipping and Maritime Security Act 1997 Sch 1 para 2(1), (3)). As to the meaning of 'right of transit passage' see PARA 68 note 11; and as to the meaning of 'straits used for international passage' see PARA 68 note 12. As to transit passage generally see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 143.

14 As to the meaning of 'master' see PARA 424.

15 See the Merchant Shipping Act 1995 s 95(3). As to the service of documents under the Merchant Shipping Act 1995 see PARA 73.

16 Merchant Shipping Act 1995 s 95(3)(a).

17 Merchant Shipping Act 1995 s 95(3)(b).

18 Merchant Shipping Act 1995 s 95(3)(c) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 1 para 2(1), (4)). For these purposes, 'competent authority' means any officer mentioned in the Merchant Shipping Act 1995 s 284(1) (see PARA 1253): s 95(5).

19 As to the meaning of 'British ship' see PARA 230.

20 Merchant Shipping Act 1995 s 95(4). As to the meaning of 'consular officer' for these purposes see PARA 48 note 11.

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1205. References of detention notices to arbitration.

Any question as to whether any of the matters specified in relation to a ship¹ in a detention notice² in connection with any opinion formed by the relevant inspector³ constituted a valid basis for that opinion must be referred, if the master⁴ or owner of the ship so requires by a notice given to the relevant inspector within 21 days from the service of the detention notice, to a single arbitrator appointed by agreement between the parties for that question to be decided by him⁵.

A person is not qualified for appointment as an arbitrator for these purposes⁶ unless he is⁷:

- 1444 (1) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate⁸;
- 1445 (2) a naval architect⁹;
- 1446 (3) a person who satisfies the judicial-appointment eligibility condition on a seven-year basis¹⁰; or
- 1447 (4) a person with special experience of shipping matters, of the fishing industry, or of activities carried on in ports¹¹.

Where a notice is so given by the master or owner of the ship¹², the giving of the notice does not suspend the operation of the detention notice unless, on the application of the person requiring the reference, the arbitrator so directs¹³.

The arbitrator must have regard, in coming to his decision, to any other matters not specified in the detention notice which appear to him to be relevant to whether the ship was or was not a dangerously unsafe ship¹⁴.

Where on such a reference¹⁵ the arbitrator decides, as respects any matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the inspector's opinion, he must either cancel the detention notice or affirm it with such modifications as he may in the circumstances think fit; and in any other case the arbitrator must affirm the notice in its original form¹⁶.

The arbitrator must include in his decision a finding whether there was or was not a valid basis for the detention of the ship as a dangerously unsafe ship¹⁷.

1 As to the meaning of 'ship' see PARA 229.

2 In pursuance of the Merchant Shipping Act 1995 s 95(3)(b) (see PARA 1204): see s 96(1).

3 For these purposes, 'relevant inspector' has the same meaning as in the Merchant Shipping Act 1995 s 95 (see PARA 1204 note 5): s 96(11).

4 As to the meaning of 'master' see PARA 424.

5 Merchant Shipping Act 1995 s 96(1). In connection with his functions under s 96, an arbitrator has the powers conferred on an inspector by s 259 (see PARA 49): s 96(8). The provisions of the Arbitration Act 1996 Pt I (ss 1-84) apply to every arbitration under an enactment (a 'statutory arbitration') (see s 94), subject to certain adaptations and exclusions (see ss 95-98); and see **ARBITRATION** vol 2 (2008) PARA 1209 et seq.

The Merchant Shipping Act 1995 s 96 is applied with modifications as follows:

- 41 (1) under the Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102 (see PARA 627);
- 42 (2) in relation to an access refusal notice under the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18) (see PARA 700);
- 43 (3) under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962 (see PARA 623);
- 44 (4) in relation to a detention notice issued pursuant to the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241 (see PARA 1189);
- 45 (5) in relation to a detention notice or order under the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205 (see PARA 1134);
- 46 (6) under the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209 (see PARA 1180);
- 47 (7) under the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055 (see PARA 629);
- 48 (8) under the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125 (see PARA 625);
- 49 (9) under the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049 (see PARA 625);
- 50 (10) under the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713 (see PARA 626);
- 51 (11) under the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223 (see PARA 1135);
- 52 (12) under the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224 (see PARA 1135).

6 le under the Merchant Shipping Act 1995 s 96: see s 96(6).

7 Merchant Shipping Act 1995 s 96(6).

8 Merchant Shipping Act 1995 s 96(6)(a).

9 Merchant Shipping Act 1995 s 96(6)(b).

10 Merchant Shipping Act 1995 s 96(6)(c), (7)(a) (s 96(7)(a) substituted by the Tribunals, Courts and Enforcement Act 2007 s 50, Sch 10 Pt 1 para 26(1), (2)). See further **LEGAL PROFESSIONS**.

11 Merchant Shipping Act 1995 s 96(6)(d). As to the meaning of 'port' see PARA 46 note 12.

12 le in accordance with the Merchant Shipping Act 1995 s 96(1) (see the text and notes 1-5): see s 96(2).

13 Merchant Shipping Act 1995 s 96(2).

14 Merchant Shipping Act 1995 s 96(3). As to the meaning of 'dangerously unsafe ship' see PARA 1203.

15 le under the Merchant Shipping Act 1995 s 96: see s 96(4).

16 Merchant Shipping Act 1995 s 96(4).

17 Merchant Shipping Act 1995 s 96(5).

UPDATE

1205 References of detention notices to arbitration

NOTE 5--See *Club Cruise Entertainment and Travelling Services Europe BV v Department for Transport, The Van Gogh* [2008] EWHC 2794 (Comm), [2009] 1 All ER (Comm) 955 (arbitration not commenced within the 21-day period, therefore compensation not available).

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1206. Compensation in connection with invalid detention of ship.

If, on a reference¹ relating to a detention notice in relation to a ship²:

1448 (1) the arbitrator decides that any matter did not constitute a valid basis for the relevant inspector's³ opinion⁴; and

1449 (2) it appears to him that there were no reasonable grounds for the inspector to form that opinion⁵,

the arbitrator may award the owner of the ship such compensation in respect of any loss suffered by him in consequence of the detention of the ship as the arbitrator thinks fit⁶.

Any compensation so awarded⁷ is payable by the Secretary of State⁸.

1 le under the Merchant Shipping Act 1995 s 96 (see PARA 1205): see s 97(1).

2 Merchant Shipping Act 1995 s 97(1). As to the meaning of 'ship' see PARA 229.

3 For these purposes, 'relevant inspector' has the same meaning as in the Merchant Shipping Act 1995 s 95 (see PARA 1204 note 5): s 97(4).

4 Merchant Shipping Act 1995 s 97(1)(a).

5 Merchant Shipping Act 1995 s 97(1)(b).

6 Merchant Shipping Act 1995 s 97(1).

The Merchant Shipping Act 1995 s 97 is applied with modifications as follows:

53 (1) under the Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102 (see PARA 627);

54 (2) in relation to an access refusal notice under the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128, Pt I (regs 1-18) (see PARA 700);

55 (3) under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962 (see PARA 623);

56 (4) in relation to a detention notice issued pursuant to the Merchant Shipping (Load Line) Regulations 1998, SI 1998/2241 (see PARA 1189);

57 (5) in relation to a detention notice or order under the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999, SI 1999/2205 (see PARA 1134);

58 (6) under the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209 (see PARA 1180);

59 (7) under the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055 (see PARA 629);

60 (8) under the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125 (see PARA 625);

- 61 (9) under the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049 (see PARA 625);
- 62 (10) under the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713 (see PARA 626);
- 63 (11) under the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223 (see PARA 1135);
- 64 (12) under the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224 (see PARA 1135).

7 le under the Merchant Shipping Act 1995 s 97: see s 97(2).

8 Merchant Shipping Act 1995 s 97(2). As to the Secretary of State see PARA 38.

UPDATE

1206 Compensation in connection with invalid detention of ship

NOTE 6--See *Club Cruise Entertainment and Travelling Services Europe BV v Department for Transport* [2008] EWHC 2794 (Comm), [2009] 1 All ER (Comm) 955 (arbitrator may award compensation even though no cause of action against Maritime and Coastguard Agency at common law).

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1207. Owner and master liable in respect of dangerously unsafe ship.

If a ship¹ which is in a port² in the United Kingdom³, or which is a United Kingdom ship⁴ and is in any other port, is dangerously unsafe⁵, the master⁶ and the owner of the ship are each guilty of an offence⁷. However, where, at the time when a ship is dangerously unsafe, any responsibilities of the owner with respect to the matters relevant to its safety⁸ have been assumed, whether wholly or in part, by any person or persons other than the owner, and have been so assumed by that person or, as the case may be, by each of those persons either directly, under the terms of a charterparty or management agreement made with the owner⁹, or indirectly, under the terms of a series of charterparties or management agreements, the reference to the owner for these purposes¹⁰ is to be construed as a reference to that other person or, as the case may be, to each of those other persons¹¹.

A person guilty of such an offence¹² is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding £50,000¹³.

It is, however, a defence in proceedings for such an offence¹⁴ to prove that at the time of the alleged offence¹⁵:

- 1450 (1) arrangements had been made which were appropriate to ensure that, before the ship went to sea¹⁶, it was made fit to do so without serious danger to human life by reason of the matters relevant to its safety which are specified in the charge¹⁷; or
- 1451 (2) it was reasonable for such arrangements not to have been made¹⁸.

It is also a defence in proceedings for such an offence to prove:

- 1452 (a) that, under the terms of one or more charterparties or management agreements entered into by the accused, the relevant responsibilities, namely (where the accused is the owner) his responsibilities with respect to the matters relevant to the ship's safety, or (where any of the accused's responsibilities have been assumed by any person or persons other than the owner¹⁹) so much of those responsibilities as had been assumed by him²⁰, had at the time of the alleged offence been wholly assumed by some other person or persons party thereto²¹; and
- 1453 (b) that in all the circumstances of the case the accused had taken such steps as it was reasonable for him to take, and exercised such diligence as it was reasonable for him to exercise, to secure the proper discharge of the relevant responsibilities during the period during which they had been assumed by some other person or persons as mentioned in head (a) above²².

In determining whether the accused had done so, regard is to be had in particular to the following matters²³, namely:

- 1454 (i) whether prior to the time of the alleged offence the accused was, or in all the circumstances of the case ought reasonably to have been, aware of any deficiency in the discharge of the relevant responsibilities²⁴; and

- 1455 (ii) the extent to which the accused was or was not able, under the terms of any such charterparty or management agreement as is mentioned in head (a) above, either to terminate it or to intervene in the management of the ship, in the event of any such deficiency, and whether it was reasonable for the accused to place himself in that position²⁵.

No proceedings for such an offence²⁶ may be instituted in England and Wales²⁷ except by or with the consent of the Secretary of State²⁸ or the Director of Public Prosecutions²⁹.

- 1 As to the meaning of 'ship' see PARA 229.
- 2 As to the meaning of 'port' see PARA 46 note 12.
- 3 As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 4 As to the meaning of 'United Kingdom ship' see PARA 230.
- 5 As to the meaning of 'dangerously unsafe ship' see PARA 1203.
- 6 As to the meaning of 'master' see PARA 424.
- 7 Merchant Shipping Act 1995 s 98(1). This provision is subject to s 98(4), (5) (see the text and notes 14-23): see s 98(1).
- 8 As to the meaning of 'the matters relevant to its safety' see PARA 1203.
- 9 For these purposes, references to responsibilities being assumed by a person under the terms of a charterparty or management agreement are references to their being so assumed by him whether or not he has entered into a further charterparty or management agreement providing for them to be assumed by some other person: Merchant Shipping Act 1995 s 98(9). 'Management agreement', in relation to a ship, means any agreement, other than a charterparty or a contract of employment, under which the ship is managed, either wholly or in part, by a person other than the owner, whether on behalf of the owner or on behalf of some other person: see s 98(8).
- 10 Ie in the Merchant Shipping Act 1995 s 98(1) (see the text and notes 1-7): see s 98(2).
- 11 Merchant Shipping Act 1995 s 98(2).
- 12 Ie under the Merchant Shipping Act 1995 s 98: see s 98(3).
- 13 Merchant Shipping Act 1995 s 98(3). As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.
- 14 Ie under the Merchant Shipping Act 1995 s 98: see s 98(4).
- 15 Merchant Shipping Act 1995 s 98(4).
- 16 As to the meaning of 'going to sea' for these purposes see PARA 1203 note 10.
- 17 Merchant Shipping Act 1995 s 98(4)(a).
- 18 Merchant Shipping Act 1995 s 98(4)(b).
- 19 Ie where the accused is liable to proceedings under the Merchant Shipping Act 1995 s 98 by virtue of s 98(2) (see the text and notes 8-11): see s 98(5)(a).
- 20 Ie as mentioned in the Merchant Shipping Act 1995 s 98(2) (see the text and notes 8-11): see s 98(5)(a).
- 21 Merchant Shipping Act 1995 s 98(5)(a).
- 22 Merchant Shipping Act 1995 s 98(5)(b).

23 Merchant Shipping Act 1995 s 98(5).

24 Merchant Shipping Act 1995 s 98(6)(a). For these purposes, 'relevant responsibilities' must be construed in accordance with s 98(5) (see head (a) in the text): see s 98(8).

25 Merchant Shipping Act 1995 s 98(6)(b).

26 Ie under the Merchant Shipping Act 1995 s 98: see s 98(7).

27 As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

28 As to the Secretary of State see PARA 38.

29 Merchant Shipping Act 1995 s 98(7). As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

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1208. Use of unsafe lighters etc.

If any person uses or causes or permits to be used in navigation any lighter, barge or like vessel when, because of: (1) the defective condition of its hull or equipment¹; (2) overloading or improper loading²; or (3) undermanning³, it is so unsafe that human life is thereby endangered, he is liable, on conviction on indictment, to a fine or, on summary conviction, to a fine not exceeding the statutory maximum⁴.

Proceedings for such an offence⁵ may not be instituted in England and Wales⁶ except by or with the consent of the Secretary of State⁷.

These provisions⁸ do not affect the liability of the owners of any lighter, barge or like vessel in respect of loss of life or personal injury caused to any person carried in the vessel⁹.

1 Merchant Shipping Act 1995 s 99(1)(a).

2 Merchant Shipping Act 1995 s 99(1)(b).

3 Merchant Shipping Act 1995 s 99(1)(c).

4 Merchant Shipping Act 1995 s 99(1). As to the meaning of 'statutory maximum' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

As to the powers of inspectors appointed under s 256(6) (see PARA 46) to serve improvement notices or prohibition notices where s 99 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 99 applies are carried on so as to involve serious personal injury or serious pollution, see PARA 50 et seq.

5 Ie under the Merchant Shipping Act 1995 s 99: see s 99(2).

6 As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

7 Merchant Shipping Act 1995 s 99(2). As to the Secretary of State see PARA 38.

8 Ie the Merchant Shipping Act 1995 s 99: see s 99(3).

9 Merchant Shipping Act 1995 s 99(3).

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1209. Owner liable for unsafe operation of ship.

It is the duty of the owner of:

- 1456 (1) any United Kingdom ship¹; and
- 1457 (2) any ship which is registered under the law of any country outside the United Kingdom and is within United Kingdom waters² while proceeding to or from a port³ in the United Kingdom (unless the ship would not be so proceeding but for weather conditions or any other unavoidable circumstances)⁴,

to take all reasonable steps to secure that the ship is operated in a safe manner⁵.

If the owner of a ship which falls within head (1) or head (2) above fails to discharge the duty so imposed on him⁶, he is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding £50,000⁷.

However, where any such ship:

- 1458 (a) is chartered by demise⁸; or
- 1459 (b) is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement⁹,

any reference to the owner of the ship for these purposes¹⁰ must be construed as including a reference:

- 1460 (i) to the charterer under the charter by demise¹¹; or
- 1461 (ii) to any such manager as is referred to in head (b) above¹²; or
- 1462 (iii) if the ship is both chartered and managed as mentioned above, to both the charterer and any such manager¹³,

and accordingly the reference¹⁴ to the taking of all reasonable steps is to be construed, in relation to the owner, the charterer or any such manager, as a reference to the taking of all such steps as it is reasonable for him to take in the circumstances of the case¹⁵.

No proceedings for such an offence¹⁶ may be instituted in England and Wales¹⁷ except by or with the consent of the Secretary of State¹⁸ or the Director of Public Prosecutions¹⁹.

1 See the Merchant Shipping Act 1995 s 100(1), (2)(a). As to the meaning of 'ship' see PARA 229; and as to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

3 As to the meaning of 'port' see PARA 46 note 12.

4 See the Merchant Shipping Act 1995 s 100(1), (2)(b).

5 See the Merchant Shipping Act 1995 s 100(1).

- 6 le by the Merchant Shipping Act 1995 s 100(1) (see the text and notes 1-5): see s 100(3).
- 7 Merchant Shipping Act 1995 s 100(3). As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.
- 8 Merchant Shipping Act 1995 s 100(4)(a).
- 9 Merchant Shipping Act 1995 s 100(4)(b). The agreement referred to in head (b) in the text is a management agreement within the meaning of s 98 (see PARA 1207 note 9): see s 100(4)(b).
- 10 le in the Merchant Shipping Act 1995 s 100(1), (3) (see the text and notes 1-7): see s 100(4).
- 11 Merchant Shipping Act 1995 s 100(4)(i).
- 12 Merchant Shipping Act 1995 s 100(4)(ii).
- 13 Merchant Shipping Act 1995 s 100(4)(iii).
- 14 le in the Merchant Shipping Act 1995 s 100(1) (see the text and notes 1-5): see s 100(4).
- 15 Merchant Shipping Act 1995 s 100(4).
- 16 le under the Merchant Shipping Act 1995 s 100: see s 100(5).
- 17 As to the meanings of 'England' and 'Wales' see PARA 17 note 2.
- 18 As to the Secretary of State see PARA 38.
- 19 Merchant Shipping Act 1995 s 100(5). As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

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(iv) Offences against Maritime Security

A. SAFETY OF SHIPS AND FIXED PLATFORMS

1210. Hijacking of ships.

A person who unlawfully, by the use of force or by threats of any kind, seizes a ship¹ or exercises control of it, commits the offence of hijacking a ship, whatever his nationality and whether the ship is in the United Kingdom² or elsewhere³. However, this offence⁴ does not apply in relation to a warship or any other ship used as a naval auxiliary or in customs or police service unless⁵:

- 1463 (1) the person seizing or exercising control of the ship is a United Kingdom national⁶; or
- 1464 (2) his act is committed in the United Kingdom⁷; or
- 1465 (3) the ship is used in the naval⁸ or customs service of the United Kingdom or in the service of any police force in the United Kingdom⁹.

A person guilty of the offence of hijacking a ship is liable, on conviction on indictment, to imprisonment for life¹⁰.

1 For these purposes, 'ship' means any vessel (including hovercraft, submersible craft and other floating craft) other than one which permanently rests on, or is permanently attached to, the sea bed and has been withdrawn from navigation or laid up: Aviation and Maritime Security Act 1990 s 17(1).

2 As to the meaning of 'United Kingdom' see PARA 17 note 3. For these purposes, the territorial waters adjacent to any part of the United Kingdom are to be treated as included in that part of the United Kingdom: Aviation and Maritime Security Act 1990 s 17(2).

3 Aviation and Maritime Security Act 1990 s 9(1).

4 ie the Aviation and Maritime Security Act 1990 s 9(1) (see the text and notes 1-3): see s 9(2).

5 Aviation and Maritime Security Act 1990 s 9(2).

6 Aviation and Maritime Security Act 1990 s 9(2)(a).

For these purposes, 'United Kingdom national' means an individual who is (1) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen; (2) a person who under the British Nationality Act 1981 is a British subject (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 9, 66-67); or (3) a British protected person within the meaning of the 1981 Act (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 10, 72 et seq): Aviation and Maritime Security Act 1990 s 17(1) (definition amended by virtue of the British Overseas Territories Act 2002 s 2(3)). As to the meaning of 'British citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq; as to the meaning of 'British overseas territories citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 44-57; as to British Nationals (Overseas) within the meaning of the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 63-65; and as to the meaning of 'British Overseas citizen' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 58 et seq.

7 Aviation and Maritime Security Act 1990 s 9(2)(b).

8 For these purposes, 'naval service' includes military and air force service: Aviation and Maritime Security Act 1990 s 17(1).

9 Aviation and Maritime Security Act 1990 s 9(2)(c).

10 Aviation and Maritime Security Act 1990 s 9(3). As to prosecution of offences under Pt II (ss 9-17) see PARA 1217; as to ancillary offences see PARA 1215; and as to the master's power of delivery see PARA 1216.

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1211. Seizing or exercising control of fixed platforms.

A person who unlawfully, by the use of force or by threats of any kind, seizes a fixed platform¹ or exercises control of it, commits an offence, whatever his nationality and whether the fixed platform is in the United Kingdom² or elsewhere³.

A person guilty of such an offence is liable, on conviction on indictment, to imprisonment for life⁴.

1 For these purposes, 'fixed platform' means: (1) any offshore installation, within the meaning of the Mineral Workings (Offshore Installations) Act 1971, which is not a ship; and (2) any other artificial island, installation or structure which: (a) permanently rests on, or is permanently attached to, the sea bed; (b) is maintained for the purposes of the exploration or exploitation of resources or for other economic purposes; and (c) is not connected with dry land by a permanent structure providing access at all times and for all purposes: Aviation and Maritime Security Act 1990 s 17(1). In the Mineral Workings (Offshore Installations) Act 1971, unless the context otherwise requires, 'offshore installation' has the same meaning as in the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1684): see the Mineral Workings (Offshore Installations) Act 1971 s 12(1) (definition added by the Oil and Gas (Enterprise) Act 1982 s 37, Sch 3 para 11; and substituted by SI 1995/738). As to the meaning of 'ship' see PARA 1210 note 1.

2 As to the meaning of 'United Kingdom' see PARA 17 note 3; and as to the territorial extent of the United Kingdom for these purposes see PARA 1210 note 2.

3 Aviation and Maritime Security Act 1990 s 10(1).

4 Aviation and Maritime Security Act 1990 s 10(2). As to prosecution of offences under Pt II (ss 9-17) see PARA 1217; and as to ancillary offences see PARA 1215.

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1212. Destroying ships or fixed platforms or endangering their safety.

A person commits an offence¹ if he unlawfully² and intentionally³:

- 1466 (1) destroys a ship⁴ or a fixed platform⁵;
- 1467 (2) damages a ship, its cargo or a fixed platform so as to endanger, or to be likely to endanger, the safe navigation of the ship or, as the case may be, the safety of the platform⁶; or
- 1468 (3) commits on board a ship or on a fixed platform an act of violence⁷ which is likely to endanger the safe navigation of the ship or, as the case may be, the safety of the platform⁸.

A person commits an offence⁹ if he unlawfully and intentionally places, or causes to be placed, on a ship or fixed platform any device or substance which¹⁰:

- 1469 (a) in the case of a ship, is likely to destroy the ship or is likely so to damage it or its cargo as to endanger its safe navigation¹¹; or
- 1470 (b) in the case of a fixed platform, is likely to destroy the fixed platform or so to damage it as to endanger its safety¹²;

but nothing in this provision¹³ is to be construed as limiting the circumstances in which the commission of any act may constitute an offence under heads (1) to (3) above¹⁴, or may constitute attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting, or being art and part in, the commission of such an offence¹⁵.

These offences¹⁶ apply whether any such act that is required to be committed by them is committed in the United Kingdom or elsewhere and whatever the nationality of the person committing the act¹⁷; but those offences¹⁸ do not apply in relation to any act committed in relation to a warship or any other ship used as a naval auxiliary or in customs or police service unless:

- 1471 (i) the person committing the act is a United Kingdom national¹⁹; or
- 1472 (ii) his act is committed in the United Kingdom²⁰; or
- 1473 (iii) the ship is used in the naval²¹ or customs service of the United Kingdom or in the service of any police force in the United Kingdom²².

A person guilty of any such offence²³ is liable, on conviction on indictment, to imprisonment for life²⁴.

1 le subject to the Aviation and Maritime Security Act 1990 s 11(5) (see the text and notes 18-22): see s 11(1).

2 For these purposes, 'unlawfully' means: (1) in relation to the commission of an act in the United Kingdom, so as, apart from the Aviation and Maritime Security Act 1990, to constitute an offence under the law of the part of the United Kingdom in which the act is committed; and (2) in relation to the commission of an act outside the United Kingdom, so that the commission of the act would, apart from the Aviation and Maritime Security Act

1990, have been an offence under the law of England and Wales if it had been committed in England and Wales: s 11(7). As to the meanings of 'England' and 'Wales' see PARA 17 note 2. As to the meaning of 'United Kingdom' see PARA 17 note 3; and as to the territorial extent of the United Kingdom for these purposes see PARA 1210 note 2.

3 Aviation and Maritime Security Act 1990 s 11(1).

4 As to the meaning of 'ship' see PARA 1210 note 1.

5 Aviation and Maritime Security Act 1990 s 11(1)(a). As to the meaning of 'fixed platform' see PARA 1211 note 1.

6 Aviation and Maritime Security Act 1990 s 11(1)(b).

7 For these purposes, 'act of violence' means: (1) any act done in the United Kingdom which constitutes the offence of murder, attempted murder, manslaughter, culpable homicide or assault (as to which see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 84 et seq) or an offence under the Offences against the Person Act 1861 s 18 (shooting or attempting to shoot, or wounding, with intent to do grievous bodily harm, or to resist apprehension) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 118), s 20 (inflicting bodily injury, with or without weapon) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 120), s 21 (attempting to choke, etc, in order to commit or assist in the committing of any indictable offence) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 121), s 22 (using chloroform, etc, to commit or assist in the committing of any indictable offence) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 122), s 23 (maliciously administering poison, etc, so as to endanger life or inflict grievous bodily harm) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 124), s 24 (maliciously administering poison, etc, with intent to injure, aggrieve, or annoy any other person) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 124), s 28 (causing bodily injury by gunpowder) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 125), s 29 (causing gunpowder to explode, or sending to any person an explosive substance, or throwing corrosive fluid on a person, with intent to do grievous bodily harm) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 126) or under the Explosive Substances Act 1883 s 2 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 127; **EXPLOSIVES** vol 17(2) (Reissue) PARA 1022); and (2) any act done outside the United Kingdom which, if done in the United Kingdom, would constitute such an offence as is mentioned in head (1): Aviation and Maritime Security Act 1990 s 11(7).

8 Aviation and Maritime Security Act 1990 s 11(1)(c).

9 Is subject to the Aviation and Maritime Security Act 1990 s 11(5) (see the text and notes 18-22): see s 11(2).

10 Aviation and Maritime Security Act 1990 s 11(2).

11 Aviation and Maritime Security Act 1990 s 11(2)(a).

12 Aviation and Maritime Security Act 1990 s 11(2)(b).

13 Is nothing in the Aviation and Maritime Security Act 1990 s 11(2): see s 11(3)(a).

14 Aviation and Maritime Security Act 1990 s 11(3)(a).

15 Aviation and Maritime Security Act 1990 s 11(3)(b). The reference in s 11(3)(b) to, or to conduct amounting to, the common law offence of inciting the commission of another offence (which is abolished under the Serious Crime Act 2007 s 94(1) by s 59), now has effect as a reference to, or to conduct amounting to, offences under the Serious Crime Act 2007 Pt 2 (ss 44-67): see s 63(1), Sch 6 Pt 1 para 18(a).

16 Is the Aviation and Maritime Security Act 1990 s 11(1), (2) (see the text and notes 1-12): see s 11(4).

17 Aviation and Maritime Security Act 1990 s 11(4).

18 Is the Aviation and Maritime Security Act 1990 s 11(1), (2) (see the text and notes 1-12): see s 11(5).

19 Aviation and Maritime Security Act 1990 s 11(5)(a). As to the meaning of 'United Kingdom national' see PARA 1210 note 6.

20 Aviation and Maritime Security Act 1990 s 11(5)(b).

21 As to the meaning of 'naval service' see PARA 1210 note 8.

22 Aviation and Maritime Security Act 1990 s 11(5)(c).

23 le under the Aviation and Maritime Security Act 1990 s 11: see s 11(6).

24 Aviation and Maritime Security Act 1990 s 11(6). As to prosecution of offences under Pt II (ss 9-17) see PARA 1217; as to ancillary offences see PARA 1215; and as to the master's power of delivery see PARA 1216.

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1213. Other acts endangering or likely to endanger safe navigation.

It is an offence¹ for any person unlawfully² and intentionally³:

- 1474 (1) to destroy or damage any property used for the provision of maritime navigation facilities (including any land, building or ship⁴ so used, and including any apparatus or equipment so used, whether it is on board a ship or elsewhere)⁵; or
- 1475 (2) seriously to interfere with the operation of any such property⁶,

where the destruction, damage or interference is likely to endanger the safe navigation of any ship⁷.

It is also an offence⁸ for any person intentionally to communicate any information which he knows to be false in a material particular, where the communication of the information endangers the safe navigation of any ship⁹; but it is a defence for a person charged with such an offence to prove that, when he communicated the information, he was lawfully employed to perform duties which consisted of or included the communication of information and that he communicated the information in good faith in performance of those duties¹⁰.

These offences¹¹ apply whether any such act that is required to be committed by them is committed in the United Kingdom¹² or elsewhere and whatever the nationality of the person committing the act¹³; but, for the purposes of those offences¹⁴, any danger, or likelihood of danger, to the safe navigation of a warship or any other ship used as a naval auxiliary or in customs or police service is to be disregarded unless:

- 1476 (a) the person committing the act is a United Kingdom national¹⁵; or
- 1477 (b) his act is committed in the United Kingdom¹⁶; or
- 1478 (c) the ship is used in the naval¹⁷ or customs service of the United Kingdom or is in the service of any police force in the United Kingdom¹⁸.

A person guilty of any such offence¹⁹ is liable, on conviction on indictment, to imprisonment for life²⁰.

¹ Is subject to the Aviation and Maritime Security Act 1990 s 12(6) (see the text and notes 14-18): see s 12(1).

² For these purposes, 'unlawfully' has the same meaning as in the Aviation and Maritime Security Act 1990 s 11 (see PARA 1212 note 2): s 12(8).

³ Aviation and Maritime Security Act 1990 s 12(1).

⁴ As to the meaning of 'ship' see PARA 1210 note 1.

⁵ Aviation and Maritime Security Act 1990 s 12(1)(a), (2).

⁶ Aviation and Maritime Security Act 1990 s 12(1)(b).

⁷ Aviation and Maritime Security Act 1990 s 12(1).

8 le subject to the Aviation and Maritime Security Act 1990 s 12(6) (see the text and notes 14-18): see s 12(3).

9 Aviation and Maritime Security Act 1990 s 12(3).

10 Aviation and Maritime Security Act 1990 s 12(4).

11 le the Aviation and Maritime Security Act 1990 s 12(1), (3) (see the text and notes 1-9): see s 12(5).

12 As to the meaning of 'United Kingdom' see PARA 17 note 3; and as to the territorial extent of the United Kingdom for these purposes see PARA 1210 note 2.

13 Aviation and Maritime Security Act 1990 s 12(5).

14 le for the purposes of the Aviation and Maritime Security Act 1990 s 12(1), (3) (see the text and notes 1-9): see s 12(6).

15 Aviation and Maritime Security Act 1990 s 12(6)(a). As to the meaning of 'United Kingdom national' see PARA 1210 note 6.

16 Aviation and Maritime Security Act 1990 s 12(6)(b).

17 As to the meaning of 'naval service' see PARA 1210 note 8.

18 Aviation and Maritime Security Act 1990 s 12(6)(c).

19 le under the Aviation and Maritime Security Act 1990 s 12: see s 12(7).

20 Aviation and Maritime Security Act 1990 s 12(7). As to prosecution of offences under Pt II (ss 9-17) see PARA 1217; as to ancillary offences see PARA 1215; and as to the master's power of delivery see PARA 1216.

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1214. Offences involving threats.

A person commits an offence if:

- 1479 (1) in order to compel any other person to do or abstain from doing any act, he threatens that he or some other person will do, in relation to any ship¹ or fixed platform², an act which is an offence by virtue of the provisions³ relating to destroying or damaging ships or fixed platforms or committing on board a ship or fixed platform acts of violence⁴ which are likely to endanger the safe navigation of the ship or, as the case may be, the safety of the platform⁵; and
- 1480 (2) the making of that threat is likely to endanger the safe navigation of the ship or, as the case may be, the safety of the fixed platform⁶.

A person commits an offence⁷ if:

- 1481 (a) in order to compel any other person to do or abstain from doing any act, he threatens that he or some other person will do an act which is an offence by virtue of the provisions⁸ relating to destroying or damaging, or seriously interfering with the operation of, property used for the provision of maritime navigation facilities⁹; and
- 1482 (b) the making of that threat is likely to endanger the safe navigation of any ship¹⁰.

These offences¹¹ apply whether any such act that is required to be committed by them is committed in the United Kingdom¹² or elsewhere and whatever the nationality of the person committing the act¹³; but, for the purposes of head (b) above, any danger, or likelihood of danger, to the safe navigation of a warship or any other ship used as a naval auxiliary or in customs or police service is to be disregarded unless¹⁴:

- 1483 (i) the person committing the act is a United Kingdom national¹⁵; or
- 1484 (ii) his act is committed in the United Kingdom¹⁶; or
- 1485 (iii) the ship is used in the naval¹⁷ or customs service of the United Kingdom or is in the service of any police force in the United Kingdom¹⁸.

A person guilty of any such offence¹⁹ is liable, on conviction on indictment, to imprisonment for life²⁰.

1 As to the meaning of 'ship' see PARA 1210 note 1.

2 As to the meaning of 'fixed platform' see PARA 1211 note 1.

3 ie by virtue of the Aviation and Maritime Security Act 1990 s 11(1) (see PARA 1212): see s 13(1)(a).

4 As to the meaning of 'act of violence' see PARA 1212 note 7.

5 Aviation and Maritime Security Act 1990 s 13(1)(a).

- 6 Aviation and Maritime Security Act 1990 s 13(1)(b).
- 7 le subject to the Aviation and Maritime Security Act 1990 s 13(4) (see the text and notes 14-18): see s 13(2).
- 8 le by virtue of the Aviation and Maritime Security Act 1990 s 12(1) (see PARA 1213): see s 13(2)(a).
- 9 Aviation and Maritime Security Act 1990 s 13(2)(a).
- 10 Aviation and Maritime Security Act 1990 s 13(2)(b).
- 11 le the Aviation and Maritime Security Act 1990 s 13(1), (2) (see the text and notes 1-10): see s 13(3).
- 12 As to the meaning of 'United Kingdom' see PARA 17 note 3; and as to the territorial extent of the United Kingdom for these purposes see PARA 1210 note 2.
- 13 Aviation and Maritime Security Act 1990 s 13(3).
- 14 Aviation and Maritime Security Act 1990 s 12(6), applied by s 13(4).
- 15 Aviation and Maritime Security Act 1990 s 12(6)(a), applied by s 13(4). As to the meaning of 'United Kingdom national' see PARA 1210 note 6.
- 16 Aviation and Maritime Security Act 1990 s 12(6)(b), applied by s 13(4).
- 17 As to the meaning of 'naval service' see PARA 1210 note 8.
- 18 Aviation and Maritime Security Act 1990 s 12(6)(c), applied by s 13(4).
- 19 le under the Aviation and Maritime Security Act 1990 s 13: see s 13(5).
- 20 Aviation and Maritime Security Act 1990 s 13(5). As to prosecution of offences under Pt II (ss 9-17) see PARA 1217; as to ancillary offences see PARA 1215; and as to the master's power of delivery see PARA 1216.

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1215. Ancillary offences.

Where a person, of whatever nationality, does outside the United Kingdom¹ any act which, if done in the United Kingdom, would constitute a specified violent offence², his act constitutes that offence if it is done in connection with an offence that is provided for in relation to the hijacking of ships³, seizing or exercising control of fixed platforms⁴, destroying ships or fixed platforms or endangering their safety⁵ or committing other acts endangering or likely to endanger safe navigation⁶ committed or attempted by him⁷.

It is an offence for any person in the United Kingdom to induce or assist the commission outside the United Kingdom of any act which⁸:

- 1486 (1) would otherwise⁹ be an offence under the provisions¹⁰ relating to the hijacking of ships¹¹; or
- 1487 (2) would otherwise¹² be an offence under the provisions¹³ relating to destroying ships or fixed platforms or endangering their safety¹⁴; or
- 1488 (3) would otherwise¹⁵ be an offence under the provisions¹⁶ relating to committing other acts endangering or likely to endanger safe navigation¹⁷; or
- 1489 (4) would otherwise¹⁸ be an offence under the provisions¹⁹ relating to offences involving threats²⁰.

A person who commits an offence under any of heads (1) to (4) above is liable, on conviction on indictment, to imprisonment for life²¹.

1 As to the meaning of 'United Kingdom' see PARA 17 note 3; and as to the territorial extent of the United Kingdom for these purposes see PARA 1210 note 2.

2 The offences so specified are murder, attempted murder, manslaughter, culpable homicide or assault (as to which see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 84 et seq) or an offence under the Offences against the Person Act 1861 s 18 (shooting or attempting to shoot, or wounding, with intent to do grievous bodily harm, or to resist apprehension) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 118), s 20 (inflicting bodily injury, with or without weapon) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 120), s 21 (attempting to choke, etc, in order to commit or assist in the committing of any indictable offence) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 121), s 22 (using chloroform, etc, to commit or assist in the committing of any indictable offence) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 122), s 23 (maliciously administering poison, etc, so as to endanger life or inflict grievous bodily harm) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 124), s 28 (causing bodily injury by gunpowder) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 125), s 29 (causing gunpowder to explode, or sending to any person an explosive substance, or throwing corrosive fluid on a person, with intent to do grievous bodily harm) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 126) or under the Explosive Substances Act 1883 s 2 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 127; **EXPLOSIVES** vol 17(2) (Reissue) PARA 1022): Aviation and Maritime Security Act 1990 s 14(2).

3 Ie the Aviation and Maritime Security Act 1990 s 9 (see PARA 1210): see s 14(1).

4 Ie the Aviation and Maritime Security Act 1990 s 10 (see PARA 1211): see s 14(1).

5 Ie the Aviation and Maritime Security Act 1990 s 11 (see PARA 1212): see s 14(1).

6 Ie the Aviation and Maritime Security Act 1990 s 12 (see PARA 1213): see s 14(1).

7 Aviation and Maritime Security Act 1990 s 14(1). Section 14(1) has effect without prejudice to the Merchant Shipping Act 1995 s 281 (offences committed on board ship) (see PARA 1105) or s 282 (offences committed by British seamen) (see PARA 1106) or the Petroleum Act 1998 s 10 (application of criminal law etc to offshore activities) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1681): Aviation and Maritime Security Act 1990 s 14(3) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 88(1), (2); and the Petroleum Act 1998 s 50, Sch 4 para 29).

8 Aviation and Maritime Security Act 1990 s 14(4). Section 14(4) has effect without prejudice to the operation, in relation to any offence under s 9 (see PARA 1210), s 11 (see PARA 1212), s 12 (see PARA 1213), or s 13 (offences involving threats) (see PARA 1214), of the Accessories and Abettors Act 1861 s 8 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 49, 51): Aviation and Maritime Security Act 1990 s 14(6).

9 Ie but for the Aviation and Maritime Security Act 1990 s 9(2) (see PARA 1210): see s 14(4)(a).

10 Ie under the Aviation and Maritime Security Act 1990 s 9 (see PARA 1210): see s 14(4)(a).

11 Aviation and Maritime Security Act 1990 s 14(4)(a).

12 Ie but for the Aviation and Maritime Security Act 1990 s 11(5) (see PARA 1212): see s 14(4)(b).

13 Ie under the Aviation and Maritime Security Act 1990 s 11 (see PARA 1212): see s 14(4)(b).

14 Aviation and Maritime Security Act 1990 s 14(4)(b).

15 Ie but for the Aviation and Maritime Security Act 1990 s 12(6) (see PARA 1213): see s 14(4)(c).

16 Ie under the Aviation and Maritime Security Act 1990 s 12 (see PARA 1213): see s 14(4)(c).

17 Aviation and Maritime Security Act 1990 s 14(4)(c).

18 Ie but for the Aviation and Maritime Security Act 1990 s 13(4) (see PARA 1214): see s 14(4)(d).

19 Ie under the Aviation and Maritime Security Act 1990 s 13 (see PARA 1214): see s 14(4)(d).

20 Aviation and Maritime Security Act 1990 s 14(4)(d).

21 Aviation and Maritime Security Act 1990 s 14(5). As to prosecution of offences under Pt II (ss 9-17) see PARA 1217; and as to the master's power of delivery see PARA 1216.

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1216. Master's power of delivery.

For the purposes of any proceedings before any court in the United Kingdom¹, if the master² of a ship³, wherever that ship may be, and whatever the state, if any, in which it may be registered, has reasonable grounds to believe that any person on board the ship has⁴:

- 1490 (1) committed an offence under any of the provisions relating to hijacking of ships⁵, destroying ships or fixed platforms or endangering their safety⁶, committing other acts endangering or likely to endanger safe navigation⁷ or under the provisions⁸ that govern offences involving threats⁹;
- 1491 (2) attempted to commit such an offence¹⁰; or
- 1492 (3) aided, abetted, counselled, procured or incited, or been art and part in, the commission of such an offence¹¹,

in relation to any ship other than a warship or other ship used as a naval auxiliary or in customs or police service, he may deliver that person to an appropriate officer¹² in the United Kingdom or any other Convention country¹³.

Where the master of a ship intends so to deliver any person in the United Kingdom or any other Convention country, he must give notification to an appropriate officer in that country¹⁴:

- 1493 (a) of his intention to deliver that person to an appropriate officer in that country¹⁵; and
- 1494 (b) of his reasons for intending to do so¹⁶;

and any such notification must be given¹⁷:

- 1495 (i) before the ship in question has entered the territorial sea of the country concerned¹⁸; or
- 1496 (ii) if in the circumstances it is not reasonably practicable to comply with head (i) above, as soon as reasonably practicable after the ship has entered that territorial sea¹⁹.

Where the master of a ship so delivers any person to an appropriate officer in any country, he must²⁰:

- 1497 (A) make to an appropriate officer in that country such oral or written statements relating to the alleged offence as that officer may reasonably require²¹; and
- 1498 (B) deliver to an appropriate officer in that country such other evidence relating to the alleged offence as is in the master's possession²².

The master of a ship who without reasonable excuse fails to comply with either of these requirements as to delivery or notification²³ is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale²⁴; but it is a defence for a

master of a ship charged with the offence of failing to give notification to an appropriate officer²⁵ to show that he believed on reasonable grounds that the giving of the required notification would endanger the safety of the ship and, except where the country concerned is the United Kingdom, that either he notified some other competent authority in the country concerned within the required time²⁶, or he believed on reasonable grounds that the giving of notification to any competent authority in that country would endanger the safety of the ship²⁷.

1 Aviation and Maritime Security Act 1990 s 15(1). As to the meaning of 'United Kingdom' see PARA 17 note 3; and as to the territorial extent of the United Kingdom for these purposes see PARA 1210 note 2.

2 For these purposes, 'master' has the same meaning as in the Merchant Shipping Act 1995 (see PARA 424): see the Aviation and Maritime Security Act 1990 s 15(8) (definition amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 88(1), (3)).

3 As to the meaning of 'ship' see PARA 1210 note 1.

4 Aviation and Maritime Security Act 1990 s 15(2).

5 In the Aviation and Maritime Security Act 1990 s 9 (see PARA 1210): see s 15(2)(a).

6 In the Aviation and Maritime Security Act 1990 s 11 (see PARA 1212): see s 15(2)(a).

7 In the Aviation and Maritime Security Act 1990 s 12 (see PARA 1213): see s 15(2)(a).

8 In the Aviation and Maritime Security Act 1990 s 13 (see PARA 1214): see s 15(2)(a).

9 Aviation and Maritime Security Act 1990 s 15(2)(a).

10 Aviation and Maritime Security Act 1990 s 15(2)(b).

11 Aviation and Maritime Security Act 1990 s 15(2)(c). The reference in s 15(2)(c) to, or to conduct amounting to, the common law offence of inciting the commission of another offence (which is abolished under the Serious Crime Act 2007 s 94(1) by s 59), now has effect as a reference to, or to conduct amounting to, offences under the Serious Crime Act 2007 Pt 2 (ss 44-67): see s 63(1), Sch 6 Pt 1 para 18(b).

12 For these purposes, 'appropriate officer' means: (1) in relation to the United Kingdom, a constable or immigration officer; and (2) in relation to any other Convention country, an officer having functions corresponding to the functions in the United Kingdom either of a constable or of an immigration officer: see the Aviation and Maritime Security Act 1990 s 15(8). For these purposes, 'Convention country' means a country in which the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation with Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (Rome, 10 March 1988; TS 64 (1995); Cm 2947) (as to which see **EXTRADITION** vol 17(2) (Reissue) PARA 1162; **INTERNATIONAL RELATIONS LAW**), is for the time being in force; and Her Majesty may by Order in Council certify that any country specified in the Order is for the time being a Convention country and any such Order in Council for the time being in force is conclusive evidence that the country in question is for the time being a Convention country: see the Aviation and Maritime Security Act 1990 s 15(8). At the date at which this volume states the law, no such Order in Council had been made.

13 Aviation and Maritime Security Act 1990 s 15(2).

14 Aviation and Maritime Security Act 1990 s 15(3).

15 Aviation and Maritime Security Act 1990 s 15(3)(a).

16 Aviation and Maritime Security Act 1990 s 15(3)(b).

17 Aviation and Maritime Security Act 1990 s 15(4).

18 Aviation and Maritime Security Act 1990 s 15(4)(a). As to the extent of the territorial and non-territorial sea, the baselines used for delimitation, and associated rights see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 121 et seq.

19 Aviation and Maritime Security Act 1990 s 15(4)(b).

20 Aviation and Maritime Security Act 1990 s 15(5).

21 Aviation and Maritime Security Act 1990 s 15(5)(a).

22 Aviation and Maritime Security Act 1990 s 15(5)(b).

23 If he fails to comply with the Aviation and Maritime Security Act 1990 s 15(3) (see the text and notes 14-16) or s 15(5) (see the text and notes 20-22): see s 15(6).

24 Aviation and Maritime Security Act 1990 s 15(6). As to the meaning of 'standard scale' see PARA 1099. As to prosecution of offences under Pt II (ss 9-17) see PARA 1217.

25 If failing to comply with the Aviation and Maritime Security Act 1990 s 15(3) (see the text and notes 14-16): see s 15(7).

26 If the time required by the Aviation and Maritime Security Act 1990 s 15(4) (see the text and notes 17-19): see s 15(7).

27 Aviation and Maritime Security Act 1990 s 15(7).

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1217. Prosecution of offences under Part II of the Aviation and Maritime Security Act 1990.

Proceedings for an offence under any provision of Part II of the Aviation and Maritime Security Act 1990¹ may not be instituted in England and Wales² except by or with the consent of the Attorney General³.

¹ See under any provision of the Aviation and Maritime Security Act 1990 Pt II (ss 9-17) (see PARA 1210 et seq): see s 16(1)(a). As to offences by bodies corporate see s 50; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 736.

² As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

³ Aviation and Maritime Security Act 1990 s 16(1)(a). As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

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B. PROTECTION OF SHIPS AGAINST ACTS OF VIOLENCE

1218. Statutory provisions relating to the protection of ships and harbour areas against acts of violence.

The purposes to which Part III of the Aviation and Maritime Security Act 1990¹ applies are the protection against acts of violence²:

- 1499 (1) of ships³, and of persons or property⁴ on board ships⁵; and
- 1500 (2) of harbour areas⁶, of such persons as are at any time present in any part of a harbour area and of any such property as forms part of a harbour area or is at any time, whether permanently or temporarily, in any part of a harbour area⁷.

Specific provision is made under Part III of the Aviation and Maritime Security Act 1990 in relation to the following matters:

- 1501 (a) the power of the Secretary of State⁸ to require information⁹;
- 1502 (b) the designation of restricted zones of harbour areas¹⁰;
- 1503 (c) the power to impose restrictions in relation to ships¹¹;
- 1504 (d) the power to require harbour authorities to promote searches in harbour areas¹²;
- 1505 (e) the power to require other persons to promote searches¹³;
- 1506 (f) the general power to direct measures to be taken for purposes to which Part III of the Aviation and Maritime Security Act 1990 applies¹⁴;
- 1507 (g) supplemental provisions with respect to directions¹⁵;
- 1508 (h) offences relating to the security of ships and harbour areas¹⁶;
- 1509 (i) the power to apply Part III of the Aviation and Maritime Security Act 1990 to sea cargo agents¹⁷;
- 1510 (j) the Secretary of State's power to impose a duty on specified persons to report certain occurrences¹⁸;
- 1511 (k) general supplemental matters¹⁹.

¹ The Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (as to which generally see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 712 et seq): see s 18(1).

² Aviation and Maritime Security Act 1990 s 18(1). In Pt III, 'act of violence' means any act (whether actual or potential, and whether done or to be done in the United Kingdom or elsewhere) which either, being an act done in Great Britain constitutes, or, if done in Great Britain would constitute, the offence of murder, attempted murder, manslaughter, culpable homicide or assault (as to which see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 84 et seq) or an offence under the Offences against the Person Act 1861 s 18 (shooting or attempting to shoot, or wounding, with intent to do grievous bodily harm, or to resist apprehension) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 118), s 20 (inflicting bodily injury, with or without weapon) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 120), s 21 (attempting to choke, etc, in order to commit or assist in the committing of any indictable offence) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 121), s 22 (using chloroform, etc, to commit or assist in the committing of any indictable offence) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 122), s 23 (maliciously administering poison, etc, so as to endanger life or inflict grievous bodily harm) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006

Reissue) PARA 124), s 24 (maliciously administering poison, etc, with intent to injure, aggrieve, or annoy any other person) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 124), s 28 (causing bodily injury by gunpowder) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 125), s 29 (causing gunpowder to explode, or sending to any person an explosive substance, or throwing corrosive fluid on a person, with intent to do grievous bodily harm) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 126) or under the Explosive Substances Act 1883 s 2 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 127; **EXPLOSIVES** vol 17(2) (Reissue) PARA 1022) or under the Criminal Damage Act 1971 s 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 334): Aviation and Maritime Security Act 1990 ss 18(2), 46(1). As to the meanings of 'United Kingdom' and 'Great Britain' see PARA 17 note 3.

3 For these purposes, 'ship' includes hovercraft and every other description of vessel used in navigation: Aviation and Maritime Security Act 1990 s 46(1).

4 For these purposes, 'property' includes any land, buildings or works, any ship or vehicle and any baggage, cargo or other article of any description; and 'article' includes any substance, whether in solid or liquid form or in the form of a gas or vapour: Aviation and Maritime Security Act 1990 s 46(1).

5 Aviation and Maritime Security Act 1990 s 18(1)(a).

6 For these purposes, 'harbour area' means: (1) the aggregate of: (a) any harbour in the United Kingdom in respect of which there is a harbour authority within the meaning of the Merchant Shipping Act 1995 (see PARA 68 note 4) (Aviation and Maritime Security Act 1990 s 18(3)(a)(i) (s 18(3) substituted by the Merchant Shipping and Maritime Security Act 1997 s 25, Sch 4 paras 1, 2)); and (b) any land which is adjacent to such a harbour and which is either land occupied by the harbour authority or land in respect of which the harbour authority has functions of improvement, maintenance or management (Aviation and Maritime Security Act 1990 s 18(3)(a)(ii) (as so substituted)); or (2) any hoverport which does not form part of any area which falls within heads (1)(a), (b) above (s 18(3)(b) (as so substituted)). 'Harbour' has the same meaning as in the Merchant Shipping Act 1995 (see PARA 49 note 5): Aviation and Maritime Security Act 1990 s 46(1) (definition substituted by the Merchant Shipping and Maritime Security Act 1997 Sch 4 para 11(2)(a)). 'Hoverport' has the same meaning as in the Hovercraft Act 1968 (see PARA 382 note 3): Aviation and Maritime Security Act 1990 s 46(1).

7 Aviation and Maritime Security Act 1990 s 18(1)(b).

8 As to the Secretary of State see PARA 38.

9 See the Aviation and Maritime Security Act 1990 s 19; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 713.

10 See the Aviation and Maritime Security Act 1990 s 20; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 714.

11 See the Aviation and Maritime Security Act 1990 s 21; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 716.

12 See the Aviation and Maritime Security Act 1990 s 22; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 717.

13 See the Aviation and Maritime Security Act 1990 s 23; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 718.

14 See the Aviation and Maritime Security Act 1990 s 24; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 719.

15 See the Aviation and Maritime Security Act 1990 ss 25-36A; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 720 et seq. Head (g) in the text includes references to: s 25 (matters which may be included in directions under ss 21-24) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 720); s 26 (limitations on scope of directions under ss 21-24) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 721); s 27 (general or urgent directions under ss 21-24) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 723); s 28 (objections to certain directions under s 24) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 724), ss 29-33 (enforcement notices) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARAS 725-727), s 34 (operation of directions under Pt III in relation to rights and duties under other laws) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 722), s 35 (detention of ships) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 728), s 36 (inspection of ships and harbour areas) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 729), and s 36A (maritime security services: approved providers) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 731).

16 See the Aviation and Maritime Security Act 1990 ss 37-40; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 732 et seq. Head (h) in the text includes references to: s 37 (false statements relating to baggage, cargo etc) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 732), s 38 (false statements in connection with identity documents) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 733), s 39 (unauthorised presence in restricted zone) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 714), and s 40 (offences relating to authorised persons) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 734).

17 See the Aviation and Maritime Security Act 1990 s 41; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 715.

18 See the Aviation and Maritime Security Act 1990 s 42; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 735.

19 See the Aviation and Maritime Security Act 1990 ss 43-46; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARAS 730, 737 et seq. Head (k) in the text includes references to: s 43, Sch 2 (compensation in respect of certain measures taken under Pt III) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 730), s 44 (annual report by Secretary of State as to notices and directions under Pt III) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 737), s 45 (service of documents) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 738), and s 46 (interpretation of Pt III).

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C. EXTENSION OF MARITIME SECURITY PROVISIONS

1219. Extension of Aviation and Maritime Security Act 1990 provisions.

Her Majesty may by Order in Council¹ make provision for extending any of the provisions of Part II² and Part III³ of the Aviation and Maritime Security Act 1990⁴, with such exceptions, adaptations or modifications as may be specified in the order, to any of the Channel Islands, the Isle of Man or any colony⁵.

¹ The power to make Orders in Council is exercisable by statutory instrument: see the Statutory Instruments Act 1946 s 1(1); and **STATUTES** vol 44(1) (Reissue) PARA 1503.

² Ie the Aviation and Maritime Security Act 1990 Pt II (ss 9-17) (as to which see PARA 1210 et seq): see s 51(1).

³ Ie the Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (as to which generally see PARA 1218): see s 51(1).

⁴ The power also extends to the Aviation and Maritime Security Act 1990 s 50 (offences by bodies corporate) (as to which see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 736): see s 51(1). See the Aviation Security and Piracy (Overseas Territories) Order 2000, SI 2000/3059.

⁵ Aviation and Maritime Security Act 1990 s 51(1). In exercise of the power so conferred, Her Majesty has made, amongst others, the Maritime Security (Jersey) Order 1996, SI 1996/2881. As to the meaning of 'colony' see **STATUTES** vol 44(1) (Reissue) PARA 1383. See also **COMMONWEALTH** vol 13 (2009) PARA 705.

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(v) Offences in respect of Salvage and Wreck

1220. Failure to obey directions of receiver where vessel in distress.

In circumstances where the statutory provisions relating to vessels in distress¹ apply in relation to any vessel, the receiver² must, among other duties, give such directions to each person as he thinks fit for the preservation of the vessel and of the lives of the shipwrecked persons³.

If any person intentionally disobeys the direction of the receiver, he is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale⁴.

1 In the case where the Merchant Shipping Act 1995 s 232 applies by virtue of s 231 (see PARA 992): see s 232(1); and PARA 993. As to the meaning of 'vessel' see PARA 885 note 5.

2 As to the meaning of 'receiver' see PARA 884 note 4.

3 See the Merchant Shipping Act 1995 s 232(1), (2); and PARA 993. In giving such a direction, the receiver must not interfere between the master and crew of the vessel in reference to the management of the vessel unless he is requested to do so by the master: see s 232(3); and PARA 993. As to the meaning of 'shipwrecked persons' see PARA 993 note 6. As to the meaning of 'master' see PARA 424.

4 Merchant Shipping Act 1995 s 232(4). Section 232(4) is subject to s 232(3) (see note 3): see s 232(4). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1221. Failure to comply with requirements imposed by receiver in case of vessel in distress.

In circumstances where the statutory provisions relating to vessels in distress¹ apply in relation to any vessel, the receiver² may, for the purpose of the preservation of shipwrecked persons³ or of the vessel, cargo and equipment, require such persons as he thinks necessary to assist him, require the master⁴ (or other person having the charge) of any vessel near at hand to give such assistance with his men, or vessel, as may be in his power and require the use of any vehicle that may be near at hand⁵. If any person refuses without reasonable excuse to comply with any requirement so made, he is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale⁶.

1 In the Merchant Shipping Act 1995 s 233 applies by virtue of s 231 (see PARA 992): see s 233(1); and PARA 994. As to the meaning of 'vessel' see PARA 885 note 5.

2 As to the meaning of 'receiver' see PARA 884 note 4.

3 As to the meaning of 'shipwrecked persons' see PARA 993 note 6.

4 As to the meaning of 'master' see PARA 424.

5 See the Merchant Shipping Act 1995 s 233(1); and PARA 994.

6 Merchant Shipping Act 1995 s 233(2). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1222. Obstruction of power to use adjoining land in case of vessel in distress.

If the owner or occupier of any land:

1512 (1) impedes or hinders any person in the exercise of rights conferred¹ to use adjoining land in the case of a vessel in distress²;

1513 (2) impedes or hinders the deposit on the land of any cargo or other article recovered from the vessel³; or

1514 (3) prevents or attempts to prevent any cargo or other article recovered from the vessel from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit⁴,

he is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale⁵.

1 See by the Merchant Shipping Act 1995 s 234(1) (see PARA 995), where s 234 applies in relation to a vessel by virtue of s 231 (see PARA 992); see s 234(1); and PARA 995. As to the meaning of 'vessel' see PARA 885 note 5.

2 Merchant Shipping Act 1995 s 234(7)(a).

3 Merchant Shipping Act 1995 s 234(7)(b).

4 Merchant Shipping Act 1995 s 234(7)(c).

5 Merchant Shipping Act 1995 s 234(7). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1223. Failure to comply with duty to notify receiver of wrecks.

If any person who finds or takes possession of any wreck¹ in United Kingdom waters², or finds or takes possession of any wreck outside United Kingdom waters and brings it within those waters³, fails without reasonable excuse to comply with the following duties⁴, namely:

1515 (1) if he is the owner of it, to give notice to the receiver⁵ stating that he has found or taken possession of it and describing the marks by which it may be recognised⁶;

1516 (2) if he is not the owner of it, to give notice to the receiver that he has found or taken possession of it and, as directed by the receiver, either hold it to the receiver's order or deliver it to the receiver⁷,

he is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale⁸; and, if he is not the owner of the wreck, he must also:

1517 (a) forfeit any claim to salvage⁹; and

1518 (b) be liable to pay twice the value of the wreck to its owner (if it is claimed) or (if it is unclaimed) to the person entitled to the wreck¹⁰.

Any sum so payable to the owner of the wreck or to the persons entitled to the wreck may, in England and Wales¹¹, be recovered summarily as a civil debt¹².

1 As to the meaning of 'wreck' see PARA 987.

2 As to the meaning of 'United Kingdom waters' see PARA 48 note 10. As to the meaning of 'United Kingdom' see PARA 17 note 3.

3 See the Merchant Shipping Act 1995 s 236(1); and PARA 997.

4 If he fails to comply with the Merchant Shipping Act 1995 s 236(1) (see PARA 997): see s 236(2). Section 236 is directed towards a criminal and improper detention by which it is sought to practise a fraud upon the Crown or the owner and not towards salvors who have restored the property to the owners: *The Zeta* (1875) LR 4 A & E 460, 3 Asp MLC 73. It does not apply to salvors who remain in possession for the safety of the vessel (*The Glynoeron* (1905) 21 TLR 648) or to a person who takes possession of a stranded vessel under the bona fide belief that it is his property by purchase or otherwise (*The Liffey* (1887) 58 LT 351, 6 Asp MLC 255).

5 As to the meaning of 'receiver' see PARA 884 note 4. As to the giving of notices under the Merchant Shipping Act 1995 see PARA 73.

6 See the Merchant Shipping Act 1995 s 236(1)(a); and PARA 997.

7 See the Merchant Shipping Act 1995 s 236(1)(b); and PARA 997.

8 Merchant Shipping Act 1995 s 236(2). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

9 Merchant Shipping Act 1995 s 236(2)(a). As to the meaning of 'salvage' see PARA 883.

- 10 Merchant Shipping Act 1995 s 236(2)(b).
- 11 As to the meanings of 'England' and 'Wales' see PARA 17 note 2.
- 12 Merchant Shipping Act 1995 s 236(3).

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1224. Failure to deliver to receiver cargo etc from vessel wrecked, stranded, or in distress.

If any person, whether the owner or not:

1519 (1) instead of ensuring delivery to the receiver¹, conceals or keeps possession of any cargo or article washed on shore or otherwise lost or taken from a vessel² which is wrecked, stranded, or in distress at any place on or near the coasts³ of the United Kingdom⁴ or any tidal water⁵ within United Kingdom waters⁶; or

1520 (2) refuses to deliver any such cargo or article to the receiver or to any person authorised by the receiver to require delivery⁷,

he is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale⁸.

The receiver or any person authorised by him may take any such cargo or article, if necessary by force, from any person who refuses to deliver it⁹.

1 le instead of complying with the Merchant Shipping Act 1995 s 237(1) (see PARA 1001). As to the meaning of 'receiver' see PARA 884 note 4.

2 As to the meaning of 'vessel' see PARA 885 note 5.

3 As to the meaning of 'on or near the coast' see *The Fulham* [1898] P 206 at 213, 8 Asp MLC 425 at 426, 427 (on appeal [1899] P 251, 8 Asp MLC 559, CA).

4 As to the meaning of 'United Kingdom' see PARA 17 note 3.

5 As to the meaning of 'tidal water' see PARA 987 note 6.

6 See the Merchant Shipping Act 1995 s 237(1), (2)(a); and PARA 1001. As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

7 See the Merchant Shipping Act 1995 s 237(1), (2)(b); and PARA 1001.

8 Merchant Shipping Act 1995 s 237(2). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

9 Merchant Shipping Act 1995 s 237(3).

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1225. Taking wreck to foreign port.

A person commits an offence if he takes into any foreign port¹ and sells:

- 1521 (1) any vessel² stranded, derelict or otherwise in distress found on or near the coasts³ of the United Kingdom⁴ or any tidal water⁵ within United Kingdom waters⁶;
- 1522 (2) any part of the cargo⁷ or equipment of, or anything belonging to, such a vessel⁸; or
- 1523 (3) any wreck⁹ found within those waters¹⁰.

A person who is guilty of such an offence¹¹ is liable, on conviction on indictment, to imprisonment for a term not exceeding five years¹².

1 As to the meaning of 'port' see PARA 46 note 12.

2 As to the meaning of 'vessel' see PARA 885 note 5.

3 As to the meaning of 'on or near the coast' see *The Fulham* [1898] P 206 at 213, 8 Asp MLC 425 at 426, 427 (on appeal [1899] P 251, 8 Asp MLC 559, CA).

4 As to the meaning of 'United Kingdom' see PARA 17 note 3.

5 As to the meaning of 'tidal water' see PARA 987 note 6.

6 Merchant Shipping Act 1995 s 245(1)(a). As to the meaning of 'United Kingdom waters' see PARA 48 note 10.

7 As to the meaning of 'cargo' for salvage purposes see PARA 926.

8 Merchant Shipping Act 1995 s 245(1)(b).

9 As to the meaning of 'wreck' see PARA 987.

10 Merchant Shipping Act 1995 s 245(1)(c).

11 It is an offence under the Merchant Shipping Act 1995 s 245 (see the text and notes 1-10): see s 245(2).

12 Merchant Shipping Act 1995 s 245(2). As to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1226. Interfering with wrecked vessel or wreck.

A person commits an offence if, without the permission of the master¹, he boards or attempts to board any vessel² which is wrecked, stranded or in distress³; and the master of a vessel may forcibly repel any person committing or attempting to commit such an offence⁴. No such offence is, however, committed if the person is the receiver⁵ or a person lawfully acting as the receiver or if he acts by command of the receiver or a person so acting⁶. A person who is guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale⁷.

A person commits an offence if:

- 1524 (1) he impedes or hinders or attempts to impede or hinder the saving of⁸:
1129
- 9. (a) any vessel stranded or in danger of being stranded, or otherwise in distress, on or near any coast or tidal water⁹; or
 - 10. (b) any part of the cargo or equipment of any such vessel¹⁰; or
 - 11. (c) any wreck¹¹;
- 1130
- 1525 (2) he conceals any wreck¹²;
- 1526 (3) he defaces or obliterates any mark on a vessel¹³; or
- 1527 (4) he wrongfully carries away or removes¹⁴:
1131
- 12. (a) any part of any vessel stranded or in danger of being stranded, or otherwise in distress, on or near any coast or tidal water¹⁵;
 - 13. (b) any part of the cargo or equipment of any such vessel¹⁶; or
 - 14. (c) any wreck¹⁷.
- 1132

A person who is guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale¹⁸.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'vessel' see PARA 885 note 5.

3 Merchant Shipping Act 1995 s 246(1).

4 Merchant Shipping Act 1995 s 246(4).

5 As to the meaning of 'receiver' see PARA 884 note 4.

6 Merchant Shipping Act 1995 s 246(2).

7 Merchant Shipping Act 1995 s 246(5)(a). As to the meaning of 'standard scale' see PARA 1099. As to time limits for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

8 Merchant Shipping Act 1995 s 246(3)(a).

9 Merchant Shipping Act 1995 s 246(3)(a)(i). As to the meaning of 'tidal water' see PARA 987 note 6. As to the meaning of 'on or near the coast' see *The Fulham* [1898] P 206 at 213, 8 Asp MLC 425 at 426, 427 (on appeal [1899] P 251, 8 Asp MLC 559, CA).

10 Merchant Shipping Act 1995 s 246(3)(a)(ii).

11 Merchant Shipping Act 1995 s 246(3)(a)(iii). As to the meaning of 'wreck' see PARA 987.

12 Merchant Shipping Act 1995 s 246(3)(b).

13 Merchant Shipping Act 1995 s 246(3)(c).

14 Merchant Shipping Act 1995 s 246(3)(d).

15 Merchant Shipping Act 1995 s 246(3)(d)(i).

16 Merchant Shipping Act 1995 s 246(3)(d)(ii).

17 Merchant Shipping Act 1995 s 246(3)(d)(iii).

18 Merchant Shipping Act 1995 s 246(5)(b).

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1227. Impeding a person endeavouring to save himself or another from shipwreck.

Any person who unlawfully or maliciously prevents or impedes any person being on board or having quitted any ship or vessel in distress or wrecked, stranded or cast on shore in his endeavour to save his life or the life of any other person endeavouring to escape is guilty of an offence and liable, on conviction on indictment, to imprisonment for life or for any shorter term¹.

¹ See the Offences against the Person Act 1861 s 17 (amended by the Statute Law Revision Act 1892; and the Statute Law Revision (No 2) Act 1893); Criminal Justice Act 1948 s 1(1); Criminal Law Act 1967 ss 1, 12(5) (a).

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1228. Assaulting a magistrate etc on account of his preserving wreck.

Any person who assaults, strikes or wounds any magistrate, officer or other person whatsoever lawfully authorised in the exercise of his duty in the preservation of any vessel in distress or of any vessel, goods or effects stranded or cast on shore or lying under water is guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding seven years¹.

¹ See the Offences against the Person Act 1861 s 37 (amended by the Statute Law Revision Act 1892); Criminal Justice Act 1948 s 1(1); Criminal Law Act 1967 s 1.

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1229. Contravention of provisions which protect sites of historic wrecks.

A person commits an offence if, in a restricted area¹, he does any of the following things otherwise than under the authority of a licence granted by the Secretary of State (or by the Welsh Ministers, as the case may be)²:

- 1528 (1) he tampers with, damages or removes any part of a vessel lying wrecked on or in the sea bed³, or any object formerly contained in such a vessel⁴; or
- 1529 (2) he carries out diving or salvage operations directed to the exploration of any wreck or to removing objects from it or from the sea bed, or uses equipment constructed or adapted for any purpose of diving or salvage operations⁵; or
- 1530 (3) he deposits, so as to fall and lie abandoned on the sea bed, anything which, if it were to fall on the site of a wreck (whether it so falls or not), would wholly or partly obliterate the site or obstruct access to it or damage any part of the wreck⁶;

and he commits an offence if he causes or permits any of those things to be done by others in a restricted area, otherwise than under the authority of such a licence⁷.

A person also commits an offence if, without authority in writing granted by the Secretary of State⁸, he enters a prohibited area⁹, whether on the surface or under water¹⁰.

A person guilty of any such offence¹¹ is liable, on conviction on indictment, to a fine or, on summary conviction, to a fine not exceeding the prescribed sum¹²; and proceedings for such an offence may be taken, and the offence may for all incidental purposes be treated as having been committed, at any place in the United Kingdom¹³ where the offender is for the time being¹⁴. Nothing is, however, to be regarded as constituting such an offence where it is done by a person:

- 1531 (a) in the course of any action taken by him for the sole purpose of dealing with an emergency of any description¹⁵; or
- 1532 (b) in exercising, or seeing to the exercise of, functions conferred by or under an enactment, local or other, on him or a body for which he acts¹⁶; or
- 1533 (c) out of necessity due to stress of weather or navigational hazards¹⁷.

¹ As to the meaning of 'restricted area' for these purposes see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1064.

² Protection of Wrecks Act 1973 s 1(3). This provision is subject to s 3(3) (see the text and notes 15-17): see s 1(3).

A licence granted by the Secretary of State (or by the Welsh Ministers, as the case may be) for the purposes of s 1(3) must be in writing (s 1(5)); and:

⁶⁵ (1) the Secretary of State (or the Welsh Ministers, as the case may be) must, in respect of a restricted area, grant licences only to persons who appear to him (or to them, as the case may be) either (s 1(5)(a)):

1. (a) to be competent and properly equipped to carry out salvage operations in a manner appropriate to the historical, archaeological or artistic importance of any wreck which may be lying in the area and of any objects contained or formerly contained in a wreck (s 1(5)(a)(i)); or
1
2. (b) to have any other legitimate reason for doing in the area that which can only be done under the authority of a licence (s 1(5)(a)(ii));
2

66 (2) a licence may be granted subject to conditions or restrictions, and may be varied or revoked by the Secretary of State (or by the Welsh Ministers, as the case may be) at any time after giving not less than one week's notice to the licensee (s 1(5)(b)); and

67 (3) anything done contrary to any condition or restriction is to be treated for the purposes of s 1(3) as done otherwise than under the authority of the licence (s 1(5)(c)).

As to the Secretary of State see PARA 38. Functions of the Secretary of State under the Protection of Wrecks Act 1973, except s 2 (see the text and notes 8-10; and PARA 1012), are transferred so as to be exercisable in relation to Wales by the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and PARA 38. As to the meaning of 'Wales' see PARA 17 note 2.

Where a person is authorised by a licence granted by the Secretary of State (or by the Welsh Ministers, as the case may be) under the Protection of Wrecks Act 1973 s 1 to carry out diving or salvage operations, it is an offence for any other person to obstruct him, or cause or permit him to be obstructed, in doing anything which is authorised by the licence, subject however to s 3(3) (see the text and notes 15-17): s 1(6).

3 As to the meaning of references to the sea bed see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1064.

4 Protection of Wrecks Act 1973 s 1(3)(a).

5 Protection of Wrecks Act 1973 s 1(3)(b).

6 Protection of Wrecks Act 1973 s 1(3)(c).

7 Protection of Wrecks Act 1973 s 1(3).

8 See note 2.

9 As to the meaning of 'prohibited area' for these purposes see PARA 1012.

10 Protection of Wrecks Act 1973 s 2(3). This provision is subject to s 3(3) (see the text and notes 15-17): see s 2(3).

11 Ie under the Protection of Wrecks Act 1973 s 1 (see the text and notes 1-7) or under s 2 (see the text and notes 8-10): see s 3(4) (amended by the Magistrates' Courts Act 1980 s 32(2)).

12 Protection of Wrecks Act 1973 s 3(4) (as amended: see note 11). As to the meaning of 'prescribed sum' see PARA 1099.

13 As to the meaning of 'United Kingdom' see PARA 17 note 3.

14 Protection of Wrecks Act 1973 s 3(4) (as amended: see note 11).

15 Protection of Wrecks Act 1973 s 3(3)(a).

16 Protection of Wrecks Act 1973 s 3(3)(b).

17 Protection of Wrecks Act 1973 s 3(3)(c).

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(vi) Offences Committed in Wartime

1230. Illegal activities in wartime.

It is an offence:

- 1534 (1) for any person having British nationality without Her Majesty's licence to quit, or go on board any ship with a view of quitting, Her Majesty's dominions with intent to accept any commission or engagement in the naval service of any foreign state at war with any friendly state, that is, a foreign state which is at peace with Her Majesty¹;
- 1535 (2) for anyone, whether having British nationality or not, within Her Majesty's dominions to induce any other person to quit, or to go on board any ship with a view of quitting, Her Majesty's dominions with the like intent²;
- 1536 (3) for the master or owner of any ship without Her Majesty's licence knowingly to take, or engage to take, or to have on board the ship within Her Majesty's dominions any illegally enlisted person³;
- 1537 (4) for any person without Her Majesty's licence to build, commission, equip or dispatch any ship to be employed in the military or naval service of any foreign state at war with a friendly state, or to build any vessel of war, adapt any ship for use as a vessel of war or dispatch or deliver any such ship from any part of Her Majesty's dominions⁴;
- 1538 (5) for any person within Her Majesty's dominions and without Her Majesty's licence to prepare or fit out any naval expedition to proceed against the dominions of any friendly state, or to engage in the preparation or fitting out or assisting in it, or to be employed in any capacity in that expedition⁵.

¹ See the Foreign Enlistment Act 1870 ss 4, 5; and **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 412.

² See the Foreign Enlistment Act 1870 ss 4, 5; and **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 412.

³ See the Foreign Enlistment Act 1870 s 7; and **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 412.

⁴ See the Foreign Enlistment Act 1870 ss 8, 10, 13; and **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 413.

⁵ See the Foreign Enlistment Act 1870 ss 11-13; and **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 414.

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(vii) Pilotage Offences

1231. Pilots operating in areas without proper authorisation.

If any person who is not an authorised pilot¹ for an area describes himself whilst he is in that area as being such a pilot or so holds himself out as to indicate or be reasonably understood to indicate that he is such a pilot², he is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale³.

1 As to the meaning of 'authorised pilot' see PARA 563.

2 As to the authorisation of pilots by a competent harbour authority in or in any part of the area in relation to which its statutory duty to provide pilotage services is exercisable see PARA 567.

3 Pilotage Act 1987 s 3(8). As to the meaning of 'standard scale' see PARA 1099.

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1232. Failure to meet requirements where compulsory pilotage in force.

If any ship¹, which is being navigated² in an area and in circumstances in which pilotage³ is compulsory for it by virtue of a pilotage direction⁴, is not under pilotage as required⁵ after an authorised pilot⁶ has offered to take charge of the ship, the master⁷ of the ship is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale⁸.

If the master of a ship navigates the ship in an area and in circumstances in which pilotage is compulsory for it by virtue of a pilotage direction without notifying the competent harbour authority⁹ which gave the direction that he proposes to do so, he is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 2 on the standard scale¹⁰.

1 As to the meaning of 'ship' see PARA 563 note 1.

2 As to the meaning of references to a ship navigating or being navigated see PARA 566 note 4.

3 As to the meaning of 'pilotage' see PARA 563.

4 As to the meaning of 'pilotage direction' see PARA 570.

5 I.e. as required by the Pilotage Act 1987 s 15(1) (see PARA 578); see s 15(2).

6 As to the meaning of 'authorised pilot' see PARA 563. As to the rights of authorised pilots see PARA 580 et seq.

7 As to the meaning of 'master' see PARA 571 note 3.

8 Pilotage Act 1987 s 15(2). As to the meaning of 'standard scale' see PARA 1099.

9 As to the meaning of 'competent harbour authority' see PARA 565.

10 Pilotage Act 1987 s 15(3).

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1233. Pilotage by unauthorised pilot.

If: (1) the master¹ of any ship² navigates it³ in any part of a harbour⁴ under the pilotage⁵ of an unauthorised person⁶ without first notifying the competent harbour authority⁷ that he proposes to do so, he is guilty of an offence⁸; (2) an unauthorised person pilots a ship within a harbour knowing that an authorised pilot has offered to pilot it, he is guilty of an offence⁹; (3) the master of a ship navigating within a harbour knowingly employs or continues to employ an unauthorised person to pilot the ship after an authorised pilot has offered to pilot it, he is guilty of an offence¹⁰.

Any person who is guilty of an offence under any of heads (1), (2) or (3) above is liable, on summary conviction, to a fine not exceeding: (a) in the case of an offence under head (1) above, level 2 on the standard scale¹¹; and (b) in the case of an offence under head (2) or (3) above, level 4 on the standard scale¹².

1 As to the meaning of 'master' see PARA 571 note 3.

2 As to the meaning of 'ship' see PARA 563 note 1.

3 As to the meaning of references to a ship navigating or being navigated see PARA 566 note 4.

4 As to the meaning of 'harbour' see PARA 565.

5 As to the meaning of 'pilotage' see PARA 563.

6 For these purposes, a person is an unauthorised person if he is neither an authorised pilot nor the holder of a pilotage exemption certificate in respect of the ship and the area in question; and any person, other than the master or one of the crew of a ship, who is on the bridge of the ship or in any other position from which the ship is navigated, whether on board or elsewhere, is deemed to be piloting the ship unless he proves otherwise: Pilotage Act 1987 s 17(5). As to the meaning of 'authorised pilot' see PARA 563; and as to the meaning of 'pilotage exemption certificate' see PARA 571. As to the meaning of 'pilot' see PARA 563.

7 As to the meaning of 'competent harbour authority' see PARA 565.

8 Pilotage Act 1987 s 17(2). As to the application of s 17(2)-(4) see PARA 580 note 5.

9 Pilotage Act 1987 s 17(3). See also note 8. The offer by the licensed pilot must be made or communicated in relation to the particular movement of the vessel which is in question: *Montague v Babbs* [1972] 1 All ER 240, [1971] 1 WLR 176, [1972] 1 Lloyd's Rep 65, DC; *Babbs v Press* [1971] 3 All ER 654, [1971] 1 WLR 1739, [1971] 2 Lloyd's Rep 383, DC (pilot flag two miles down river not an offer). Where such an offer is made, the fact that the task of piloting is almost complete is no defence: *Smith v Cocking* [1959] 1 Lloyd's Rep 88, DC.

10 Pilotage Act 1987 s 17(4). See also note 8.

11 Pilotage Act 1987 s 17(6)(a). As to the meaning of 'standard scale' see PARA 1099.

12 Pilotage Act 1987 s 17(6)(b).

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1234. Failure of master to supply sufficient information to enable pilot to carry out his duties.

Any master¹ of a ship² who:

- 1539 (1) refuses to comply with a request made to him by a pilot³ to declare the piloted ship's draught of water, length and beam, and to provide him with such other information relating to the ship or its cargo as the pilot specifies and is necessary to enable him to carry out his duties as the pilot of the ship⁴; or
- 1540 (2) makes a statement which is false in a material particular in answer to such a request as is mentioned in head (1) above, knowing it to be false or being reckless as to whether it is false, or fails without reasonable excuse to correct such a statement made by another person in answer to such a request, although himself knowing it to be false⁵; or
- 1541 (3) without reasonable excuse fails to bring to the notice of any person who pilots the ship any defects in, and any matter peculiar to, the ship and its machinery and equipment of which the master knows and which might materially affect the navigation of the ship⁶,

is guilty of an offence⁷, and liable, on summary conviction, to a fine not exceeding: (a) in the case of an offence under head (2) above, level 5 on the standard scale⁸; and (b) in any other case, level 4 on the standard scale⁹.

1 As to the meaning of 'master' see PARA 571 note 3.

2 As to the meaning of 'ship' see PARA 563 note 1.

3 As to the meaning of 'pilot' see PARA 563.

4 Pilotage Act 1987 s 18(3)(a). The text refers to a request made to the master of a ship in pursuance of s 18(1) (see PARA 581): see s 18(3)(a).

5 Pilotage Act 1987 s 18(3)(b).

6 Pilotage Act 1987 s 18(3)(c). The text refers to any person who without reasonable excuse contravenes s 18(2) (see PARA 581): see s 18(3)(c).

7 Pilotage Act 1987 s 18(3).

8 Pilotage Act 1987 s 18(4)(a). As to the meaning of 'standard scale' see PARA 1099.

9 Pilotage Act 1987 s 18(4)(b).

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1235. Taking authorised pilot out of his area.

A master¹ of a ship² who, without reasonable excuse, contravenes the prohibition on taking an unauthorised pilot³ without his consent beyond the point up to which he has been engaged to pilot the ship⁴, is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale⁵.

1 As to the meaning of 'master' see PARA 571 note 3.

2 As to the meaning of 'ship' see PARA 563 note 1.

3 As to the meaning of 'authorised pilot' see PARA 563.

4 I.e. a person who contravenes the Pilotage Act 1987 s 19(1) (see PARA 582): see s 19(2).

5 Pilotage Act 1987 s 19(2). As to the meaning of 'standard scale' see PARA 1099.

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1236. Failure to provide facilities for authorised pilot boarding or leaving ship.

If the master¹ of any ship² without reasonable excuse contravenes the requirements to facilitate a pilot³ boarding and subsequently leaving the ship in circumstances where the master is offered the services of an authorised pilot⁴ (or if the master of a ship accepts the services of an authorised pilot in any other circumstances)⁵, he is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale⁶.

1 As to the meaning of 'master' see PARA 571 note 3.

2 As to the meaning of 'ship' see PARA 563 note 1.

3 As to the meaning of 'pilot' see PARA 563.

4 As to the meaning of 'authorised pilot' see PARA 563.

5 Ie if the master of any ship contravenes the Pilotage Act 1987 s 20(1) (see PARA 583): see s 20(2).

6 Pilotage Act 1987 s 20(2). As to the meaning of 'standard scale' see PARA 1099.

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1237. Misconduct by pilot endangering ship or persons on board ship.

If the pilot¹ of a ship²:

- 1542 (1) does any act which causes or is likely to cause the loss or destruction of, or serious damage to, the ship or its machinery, navigational equipment or safety equipment, or the death of, or serious injury to, a person on board the ship³; or
- 1543 (2) omits to do anything required to preserve the ship or its machinery, navigational equipment or safety equipment, from loss, destruction or serious damage, or to preserve any person on board the ship from death or serious injury⁴,

and the act or omission is deliberate or amounts to a breach or neglect of duty or he is under the influence of drink or a drug at the time of the act or omission, he is guilty of an offence⁵; and he is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both⁶.

1 As to the meaning of 'pilot' see PARA 563.

2 As to the meaning of 'ship' see PARA 563 note 1.

3 Pilotage Act 1987 s 21(1)(a).

4 Pilotage Act 1987 s 21(1)(b).

5 Pilotage Act 1987 s 21(1).

6 Pilotage Act 1987 s 21(2). As to the meaning of 'statutory maximum' see PARA 1099.

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(viii) Obstruction of Enforcement Powers

1238. Interference with power to require production of ships' documents.

If any person, on being duly required¹ by an officer to produce a log book or any document², fails without reasonable excuse to produce the log book or document, he is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale³.

If any person, on being duly required⁴ by any officer:

- 1544 (1) to produce a log book or document, refuses to allow the log book or document to be inspected or copied⁵;
- 1545 (2) to muster the crew, impedes the muster⁶; or
- 1546 (3) to give any explanation, refuses or neglects to give the explanation or knowingly misleads or deceives the officer⁷,

he is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale⁸.

1 He duly required under the Merchant Shipping Act 1995 s 257 (see PARA 47): see s 257(3).

2 As to official log books see PARAS 531-533.

3 Merchant Shipping Act 1995 s 257(3). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

4 He duly required under the Merchant Shipping Act 1995 s 257 (see PARA 47): see s 257(4).

5 Merchant Shipping Act 1995 s 257(4)(a).

6 Merchant Shipping Act 1995 s 257(4)(b).

7 Merchant Shipping Act 1995 s 257(4)(c).

8 Merchant Shipping Act 1995 s 257(4).

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1239. Interference with powers to inspect ships and their equipment etc.

If any person obstructs a person in the exercise of his powers to inspect ships and their equipment etc¹, or fails to comply with a requirement made by a person exercising his powers, he is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale².

1 Ie his powers under the Merchant Shipping Act 1995 s 258 (see PARA 48): see s 258(5).

2 Merchant Shipping Act 1995 s 258(5). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1240. Interference with powers of inspectors in relation to premises and ships.

A person who:

- 1547 (1) intentionally obstructs an inspector¹ in the exercise of any power available to him² in relation to premises and ships³; or
- 1548 (2) without reasonable excuse does not comply with a requirement duly imposed⁴ or prevents another person from complying with such a requirement⁵; or
- 1549 (3) without prejudice to the generality of head (2) above, makes a statement or signs a declaration which he knows is false, or recklessly makes a statement or signs a declaration which is false, in purported compliance with a requirement duly made⁶,

is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding the statutory maximum⁷.

1 As to the powers of inspectors for these purposes see PARA 49.

2 I.e. under the Merchant Shipping Act 1995 s 259 (see PARA 49): see s 260(1)(a).

3 Merchant Shipping Act 1995 s 260(1)(a). As to the meaning of 'ship' see PARA 229.

The Merchant Shipping Act 1995 s 260 applies both to the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, and to the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, as if they were for all purposes made under the Merchant Shipping Act 1995 s 85 (see PARA 591 et seq) and accordingly s 260 applies in relation to government ships: see the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 19; the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, reg 22; and PARA 636 et seq. As to government ships see PARA 20.

4 I.e. in pursuance of the Merchant Shipping Act 1995 s 259 (see PARA 49): see s 260(1)(b).

5 Merchant Shipping Act 1995 s 260(1)(b). See note 3.

6 Merchant Shipping Act 1995 s 260(1)(c). The text refers to a requirement made in pursuance of s 259(2)(i) (see PARA 49): see s 260(1)(c). See note 3.

7 Merchant Shipping Act 1995 s 260(1). See note 3.

As to the meaning of 'statutory maximum' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1241. Contravention of a requirement imposed by prohibition notice and improvement notice.

Any person who contravenes any requirement imposed by an improvement notice¹ is liable, on conviction on indictment, to a fine or, on summary conviction, to a fine not exceeding the statutory maximum².

Any person who contravenes any prohibition imposed by a prohibition notice³ is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding the statutory maximum⁴.

It is a defence for a person charged with such an offence⁵ to prove that he exercised all due diligence to avoid a contravention of the requirement or prohibition in question⁶.

1 As to the meaning of 'improvement notice' see PARA 50. For these purposes, any reference to an improvement notice includes a reference to such a notice as modified under the Merchant Shipping Act 1995 s 264(3) (see PARA 53): s 266(4).

2 Merchant Shipping Act 1995 s 266(1).

As to the meaning of 'statutory maximum' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

The Merchant Shipping Act 1995 s 266 applies both to the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, and to the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, as if they were for all purposes made under the Merchant Shipping Act 1995 s 85 (see PARA 591 et seq) and accordingly s 266 applies in relation to government ships: see the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075, reg 19; the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, reg 22; and PARA 636 et seq. As to government ships see PARA 20.

3 As to the meaning of 'prohibition notice' see PARA 51. For these purposes, any reference to a prohibition notice includes a reference to such a notice as modified under the Merchant Shipping Act 1995 s 264(3) (see PARA 53): s 266(4).

4 Merchant Shipping Act 1995 s 266(2). See note 2.

5 Is an offence under the Merchant Shipping Act 1995 s 266: see s 266(3).

6 Merchant Shipping Act 1995 s 266(3). See note 2.

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1242. Failure to give required information or assistance to surveyor of ships.

If the owner, master¹ or engineer of any ship² being surveyed by a surveyor of ships³, on being required to give any information or assistance for the purpose of making returns to the Secretary of State⁴, fails without reasonable excuse to give the information or assistance, he is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale⁵.

1 As to the meaning of 'master' see PARA 424.

2 As to the meaning of 'ship' see PARA 229.

3 As to the meaning of 'surveyor of ships' see PARA 46 note 13.

4 He on being required under the Merchant Shipping Act 1995 s 299(5) to give any information or assistance for the purposes of returns under s 299(4) (see PARA 43): see s 299(6). As to the Secretary of State see PARA 38.

5 Merchant Shipping Act 1995 s 299(6). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1243. Enforcement of orders regulating shipping services in the event of foreign action.

If a person discloses any information which has been furnished or obtained by him under, or in connection with the execution of, the provisions relating to the regulation of shipping services in the event of foreign action¹, he is liable, unless the disclosure is made:

- 1550 (1) with the consent of the person from whom the information was obtained²;
or
- 1551 (2) in connection with the execution of those provisions³; or
- 1552 (3) for the purposes of any legal proceedings arising out of the enforcement provisions⁴ of or any report of such proceedings⁵; or
- 1553 (4) in pursuance of a Community obligation⁶ to a Community institution⁷,

on summary conviction to a fine not exceeding level 5 on the standard scale⁸.

A person who:

- 1554 (a) refuses or intentionally neglects to furnish any information which he is required to furnish under the provisions relating to the regulation of shipping services in the event of foreign action⁹; or
- 1555 (b) in furnishing any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular¹⁰,

is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale in the case of an offence under head (a) above and not exceeding level 5 on the standard scale in the case of an offence under head (b) above¹¹.

A person who intentionally contravenes or fails to comply with any provision of an order or direction made or given under the provisions relating to the regulation of shipping services in the event of foreign action¹², other than a provision requiring him to give any information, is liable, on conviction on indictment, to a fine, or, on summary conviction, to a fine of not more than £5,000¹³. Where the order or direction requires anything to be done, or not to be done, by, to or on a ship¹⁴, and the requirement is not complied with, the owner and master¹⁵ of the ship are each to be regarded as intentionally failing to comply, without prejudice to the liability of anyone else¹⁶.

A person is not guilty of an offence against any provision contained in or having effect under the provisions relating to the regulation of shipping services in the event of foreign action¹⁷ by reason only of something done by that person wholly outside the territory of the United Kingdom¹⁸ unless that person is a Commonwealth citizen under the British Nationality Act 1981¹⁹ or a company incorporated under the law of any part of the United Kingdom²⁰.

¹ I.e. under the Shipping and Trading Interests (Protection) Act 1995 ss 1, 2 (see PARA 74): see s 3(4). As to the meaning of 'shipping services' for these purposes see PARA 74 note 6.

- 2 Shipping and Trading Interests (Protection) Act 1995 s 3(4)(a).
- 3 Shipping and Trading Interests (Protection) Act 1995 s 3(4)(b). The text refers to the execution of ss 1, 2 (see PARA 74): see s 3(4)(b).
- 4 le arising out of the Shipping and Trading Interests (Protection) Act 1995 s 3: see s 3(4)(c).
- 5 Shipping and Trading Interests (Protection) Act 1995 s 3(4)(c).
- 6 As to the meaning of 'Community obligation' see PARA 67 note 1.
- 7 Shipping and Trading Interests (Protection) Act 1995 s 3(4)(d). 'Community institution' means any institution of any of the Communities (as defined by the European Communities Act 1972 s 1(2)) or common to the Communities: s 1(2), Sch 1 Pt II.
- 8 Shipping and Trading Interests (Protection) Act 1995 s 3(4). In relation to the extension of disclosure powers under s 3(4) see the Anti-terrorism, Crime and Security Act 2001 s 17, Sch 4 Pt 1 para 36; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 395.
The Merchant Shipping Act 1995 Pt XII (ss 274-291) (provision in relation to legal proceedings and related matters) (see PARA 1100 et seq) applies for the purposes of the Shipping and Trading Interests (Protection) Act 1995 as it applies for the purposes of the Merchant Shipping Act 1995: Shipping and Trading Interests (Protection) Act 1995 s 7(1). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.
- 9 Shipping and Trading Interests (Protection) Act 1995 s 3(5)(a). The text refers to a requirement to furnish any information under ss 1, 2 (see PARA 74): see s 3(4)(b).
- 10 Shipping and Trading Interests (Protection) Act 1995 s 3(5)(b).
- 11 Shipping and Trading Interests (Protection) Act 1995 s 3(5).
- 12 le an order or direction made or given pursuant to the Shipping and Trading Interests (Protection) Act 1995 ss 1, 2 (see PARA 74): see s 3(6).
- 13 Shipping and Trading Interests (Protection) Act 1995 s 3(6).
- 14 As to the meaning of 'ship' for these purposes see PARA 74 note 6.
- 15 For these purposes, 'master' has the same meaning as in the Merchant Shipping Act 1995 (see PARA 424): Shipping and Trading Interests (Protection) Act 1995 s 9(2).
- 16 Shipping and Trading Interests (Protection) Act 1995 s 3(6).
- 17 le under the Shipping and Trading Interests (Protection) Act 1995 ss 1, 2 (see PARA 74): see s 3(7).
- 18 As to the meaning of 'United Kingdom' see PARA 17 note 3.
- 19 As to who are Commonwealth citizens under the British Nationality Act 1981 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 11.
- 20 Shipping and Trading Interests (Protection) Act 1995 s 3(7).

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1244. Enforcement of orders regulating coastal shipping services which are not British-based.

Where:

- 1556 (1) any ship¹ is used in the course of the provision of any coastal shipping services which are not British-based²; or
- 1557 (2) anything is done on board a ship with a view to its being used to provide such services³,

and where the provision of those services is prohibited⁴ and is not sanctioned by any licence duly issued⁵, the master⁶ and the owner of the ship⁷ are each guilty of an offence⁸. It is a defence in such proceedings:

- 1558 (a) against the master of a ship to prove that he did not know and had no reason to suspect that, in the circumstances of the case, the provision of the shipping services referred to in head (1) above or, as the case may be, head (2) above, was prohibited⁹ or that he had reasonable grounds for believing that the provision of those services was sanctioned by a licence duly issued¹⁰;
- 1559 (b) against a person other than the master of a ship to prove that, under the terms of one or more charterparties or management agreements entered into by the accused, the right to determine the purpose for which the ship in question was being used at the time of the alleged offence was wholly vested in some other person or persons party thereto, whether or not such other person or persons had entered into a further charterparty or management agreement providing for that right to be vested in some other person¹¹.

Any person who in connection with an application for a licence¹² or in purported compliance with the requirements of any notice served on him requiring the production or furnishing of documents or information¹³ knowingly or recklessly furnishes information which is false in a material particular is guilty of an offence¹⁴. Any person who:

- 1560 (i) without reasonable excuse, the proof of which lies on him, fails to comply with the requirements of any such notice¹⁵; or
- 1561 (ii) intentionally alters, suppresses, conceals or destroys a document which he has been so required to produce¹⁶,

is guilty of an offence¹⁷.

Any person guilty of any such offence¹⁸ is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or to both) or, on summary conviction, to a fine not exceeding £50,000¹⁹.

1 As to the meaning of 'ship' for these purposes see PARA 74 note 6.

2 Shipping and Trading Interests (Protection) Act 1995 s 6(1)(a). The text refers to the provision of any shipping services to which s 5 (see PARA 76) applies: see s 6(1)(a). As to the meaning of 'shipping services' for these purposes see PARA 74 note 6.

3 Shipping and Trading Interests (Protection) Act 1995 s 6(1)(b).

4 Ie by virtue of the Shipping and Trading Interests (Protection) Act 1995 s 5(1) (see PARA 76): see s 6(1).

5 Ie any licence issued by virtue of the Shipping and Trading Interests (Protection) Act 1995 s 5(3)(b) (see PARA 76): see s 6(1).

6 For these purposes, 'master' has the same meaning as in the Merchant Shipping Act 1995 (see PARA 424): Shipping and Trading Interests (Protection) Act 1995 s 9(2).

7 For these purposes, where the ship is chartered by demise or is managed (either wholly or in part) by a person other than the owner under the terms of a management agreement, the reference to the owner of the ship is to be construed as including a reference to the charterer under the charter by demise, to any such manager under the terms of a management agreement or (if the ship is both chartered and managed in this way), to both the charterer and any such manager: Shipping and Trading Interests (Protection) Act 1995 s 6(2). 'Management agreement', in relation to a ship, means any agreement, other than a charterparty or a contract of employment, under which the ship is managed, either wholly or in part, by a person other than the owner, whether on behalf of the owner or on behalf of some other person: s 6(9).

8 Shipping and Trading Interests (Protection) Act 1995 s 6(1). The provisions of s 6(1) apply to offences falling within s 6(1) wherever committed: s 6(8).

Without prejudice to the Merchant Shipping Act 1995 s 291 (service of documents) (see PARA 73) in its application to the Shipping and Trading Interests (Protection) Act 1995, any document required or authorised by or under any enactment to be served for the purpose of the institution of, or otherwise in connection with proceedings for an offence under s 6(1) is treated, where it is to be served on a person who was, at the time of the alleged offence, either the owner of the ship in question or such a charterer by demise or manager of that ship as is mentioned in s 6(2) (see note 7), as duly served on that person if sent to him by post at his last-known address, whether of his residence or of a place where he carries on business, or left for him at that address, or if the document is served on the master of the ship in question: s 7(3).

9 Shipping and Trading Interests (Protection) Act 1995 s 6(6)(a). The text refers to shipping services prohibited by virtue of s 5(1) (see PARA 76): see s 6(6)(a).

10 Shipping and Trading Interests (Protection) Act 1995 s 6(6)(b). The text refers to a licence issued by virtue of s 5(3)(b)(see PARA 76): see s 6(6)(b).

11 Shipping and Trading Interests (Protection) Act 1995 s 6(7).

12 Ie a licence such as is mentioned in the Shipping and Trading Interests (Protection) Act 1995 s 5(3)(b) (see PARA 76): see s 6(3).

13 Ie any notice served on him by virtue of the Shipping and Trading Interests (Protection) Act 1995 s 5(3)(e) (see PARA 76): see s 6(3).

14 Shipping and Trading Interests (Protection) Act 1995 s 6(3). The provisions of s 6(3) apply to offences falling within s 6(3) wherever committed: s 6(8).

15 Shipping and Trading Interests (Protection) Act 1995 s 6(4)(a).

16 Shipping and Trading Interests (Protection) Act 1995 s 6(4)(b). The text refers to a document which the person has been required to produce in pursuance of s 5(3)(e) (see PARA 76): see s 6(4)(b).

17 Shipping and Trading Interests (Protection) Act 1995 s 6(4). The provisions of s 6(4) apply to offences falling within s 6(4) wherever committed: s 6(8).

18 Ie any offence under the Shipping and Trading Interests (Protection) Act 1995 s 6: see s 6(5).

19 Shipping and Trading Interests (Protection) Act 1995 s 6(5).

The Merchant Shipping Act 1995 Pt XII (ss 274-291) (provision in relation to legal proceedings and related matters) (see PARA 1100 et seq) applies for the purposes of the Shipping and Trading Interests (Protection) Act 1995 as it applies for the purposes of the Merchant Shipping Act 1995: Shipping and Trading Interests (Protection) Act 1995 s 7(1). However, proceedings for any offence under s 6 may not be instituted except by or

with the consent of the Attorney General or the Secretary of State: s 7(2). As to the Secretary of State see PARA 38. As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

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(ix) Improper Disclosures; Giving False Information

1245. Printing, selling etc of forms not prepared or approved by the Secretary of State.

If any person prints, sells or uses any document purporting to be a form approved by the Secretary of State¹ knowing that the document is not the form approved for the time being or that the document has not been prepared or issued by the Secretary of State, that person is liable, on summary conviction, to a fine not exceeding level 2 on the standard scale².

¹ As to the Secretary of State see PARA 38; and as to his power to prepare and approve forms see PARA 42.

² Merchant Shipping Act 1995 s 300(7). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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(x) Damage to Lighthouses etc; False Lights

1246. Offences in connection with damage etc to lighthouses etc.

A person who, without lawful authority:

- 1562 (1) intentionally or recklessly damages any lighthouse¹ or the lights exhibited in it, or any lightship, buoy or beacon²;
- 1563 (2) removes, casts adrift or sinks any lightship, buoy or beacon³; or
- 1564 (3) conceals or obscures any lighthouse, buoy or beacon⁴,

commits an offence⁵; and a person who, without reasonable cause, rides by, makes fast to, or runs foul of, any lightship, buoy or beacon commits an offence⁶.

A person who is guilty of any such offence⁷ is liable, in addition to being liable for the expenses of making good any damage so occasioned, on summary conviction, to a fine not exceeding level 4 on the standard scale⁸.

1 As to the meaning of 'lighthouse' see PARA 1068 note 1.

2 Merchant Shipping Act 1995 s 219(1)(a). As to the meaning of 'buoys and beacons' see PARA 1068 note 2.

3 Merchant Shipping Act 1995 s 219(1)(b).

4 Merchant Shipping Act 1995 s 219(1)(c).

5 Merchant Shipping Act 1995 s 219(1).

6 Merchant Shipping Act 1995 s 219(2).

7 Ie under the Merchant Shipping Act 1995 s 219 (see the text and notes 1-6): see s 219(3).

8 Merchant Shipping Act 1995 s 219(3). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

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1247. Offences in connection with prevention of false lights.

Whenever any light is exhibited at such place or in such manner as to be liable to be mistaken for a light proceeding from a lighthouse¹, the general lighthouse authority² within whose area³ the place is situated may serve a notice (a 'prevention notice') upon the owner of the place where the light is exhibited or upon the person having the charge of the light⁴.

A prevention notice is a notice directing the person to whom it is addressed to take, within a reasonable time specified in the notice, effectual means for extinguishing or effectually screening the light and for preventing for the future any similar light⁵.

A prevention notice may, in addition to any other mode of service authorised by the Merchant Shipping Act 1995⁶, be served by affixing the notice in some conspicuous spot near to the light to which it relates⁷.

If a person on whom a prevention notice is served fails, without reasonable excuse, to comply with the directions contained in the notice, he is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale⁸.

If a person on whom a prevention notice is served neglects for a period of seven days to extinguish or effectually screen the light mentioned in the notice, the general lighthouse authority may enter the place where the light is and forthwith extinguish it, doing no unnecessary damage⁹. Where a general lighthouse authority incurs any expenses in exercising these powers¹⁰, it may recover the expenses from the person on whom the prevention notice is served¹¹. Any such expenses may, in England and Wales¹², be recovered summarily as a civil debt¹³.

1 As to the meaning of 'lighthouse' see PARA 1068 note 1.

2 As to the meaning of 'general lighthouse authority' see PARA 1068.

3 As to the meaning of 'area' see PARA 1068 note 12.

4 Merchant Shipping Act 1995 s 220(1).

5 Merchant Shipping Act 1995 s 220(2).

6 As to the service of documents under the Merchant Shipping Act 1995 generally see PARA 73.

7 Merchant Shipping Act 1995 s 220(3).

8 Merchant Shipping Act 1995 s 220(4). As to the meaning of 'standard scale' see PARA 1099. As to the time limit for summary offences see PARA 1100; as to offences by officers of bodies corporate see PARA 1102; as to jurisdiction in relation to offences see PARA 1103; as to jurisdiction over ships lying off the coast see PARA 1104; as to jurisdiction in the case of offences on board ship see PARA 1105; as to offences committed by British seamen see PARA 1106; and as to proof etc of exemption see PARA 1112.

9 Merchant Shipping Act 1995 s 220(5).

10 Ie under the Merchant Shipping Act 1995 s 220(5) (see the text and note 9): see s 220(6).

11 Merchant Shipping Act 1995 s 220(6).

12 As to the meanings of 'England' and 'Wales' see PARA 17 note 2.

13 Merchant Shipping Act 1995 s 220(7).

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(3) BARRATRY AND PIRACY

1248. Barratry.

A master or a member of a crew who wilfully commits a wrongful act to the prejudice of the owner or, as the case may be, charterer is guilty of the offence of barratry¹.

¹ See the Marine Insurance Act 1906 s 30(2), Sch 1 r 11; and **INSURANCE** vol 25 (2003 Reissue) PARA 342. See also *Earle v Rowcroft* (1806) 8 East 126. The commission of a crime is not necessary to constitute barratry: *Compania Naviera Bachi v Henry Hosegood & Co Ltd* [1938] 2 All ER 189, 60 Ll L Rep 236.

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1249. Piracy under the United Nations Convention on the Law of the Sea.

For the avoidance of doubt, it is declared that, for the purposes of any proceedings before a court in the United Kingdom¹ in respect of piracy, the following provisions² are to be treated as part of the law of nations³.

Piracy consists of any of the following acts:

- 1565 (1) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed⁴:
 - 1133 15. (a) on the high seas⁵, against another ship or aircraft, or against persons or property on board such ship or aircraft⁶;
 - 16. (b) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state⁷;
- 1134 1566 (2) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft⁸;
- 1567 (3) any act of inciting or of intentionally facilitating an act described in head (1) or head (2) above⁹.

The acts of piracy, as so defined, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft¹⁰.

1 As to the meaning of 'United Kingdom' see PARA 17 note 3.

2 The provisions of the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941) arts 101-103 (see the text and notes 4-10) which are set out in the Merchant Shipping and Maritime Security Act 1997 s 26(1), Sch 5: see s 26(1). See also note 3.

3 Merchant Shipping and Maritime Security Act 1997 s 26(1). The Tokyo Convention Act 1967, so far as unrepealed, ceases to have effect (Merchant Shipping and Maritime Security Act 1997 ss 26(3), 29(2), Sch 7); however, nothing in s 26 affects the operation of any Order in Council made under the Tokyo Convention Act 1967 s 8, although any such Order may be revoked as if made under the Merchant Shipping and Maritime Security Act 1997 s 26(4): s 26(6). Her Majesty may by Order in Council direct that s 26(1)-(3) and Sch 5 are to extend to the Isle of Man, any of the Channel Islands or any colony with such modifications, if any, as appear to Her to be appropriate: s 26(4). In exercise of the power so conferred, Her Majesty has made the Aviation Security and Piracy (Overseas Territories) Order 2000, SI 2000/3059. As to the meaning of 'colony' see **STATUTES** vol 44(1) (Reissue) PARA 1383.

The general topic of piracy is discussed elsewhere in this work: see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 155 et seq.

4 United Nations Convention on the Law of the Sea 1982 art 101(a). See note 2.

5 For these purposes, the high seas are to be taken, in accordance with the United Nations Convention on the Law of the Sea 1982 art 58(2), to include all waters beyond the territorial sea of the United Kingdom or any other state: Merchant Shipping and Maritime Security Act 1997 s 26(2). See note 3. As to the extent of the

territorial sea (or waters) of the United Kingdom see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 121 et seq.

6 United Nations Convention on the Law of the Sea 1982 art 101(a)(i). For these purposes, a ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in art 101 (see heads (1)-(3) in the text): art 103. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act: art 103. See note 2.

7 United Nations Convention on the Law of the Sea 1982 art 101(a)(ii). See note 2.

8 United Nations Convention on the Law of the Sea 1982 art 101(b). See note 2.

9 United Nations Convention on the Law of the Sea 1982 art 101(c). See note 2.

10 United Nations Convention on the Law of the Sea 1982 art 102. See note 2.

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(4) CIVIL LIABILITY OF SEAMEN FOR OFFENCES

1250. Seaman's liability for damages when absent without leave.

Provision is made¹ with respect to the liability of a seaman² employed in a United Kingdom ship³ to damages for being absent from his ship at a time when he is required under his contract of employment to be on board⁴.

If he proves that his absence was due to an accident⁵ or mistake or some other cause beyond his control and that he took all reasonable precautions to avoid being absent, his absence is not to be treated as a breach of contract⁶. Where, however, this does not apply, then, if no special damages are claimed, his liability is £10 and, if special damages are claimed, his liability is not more than £100⁷.

1 le by the Merchant Shipping Act 1995 s 70(2), (3) (see the text and notes 5-7), whose application is determined by s 70(1): see s 70(1).

2 As to the meaning of 'seaman' see PARA 424.

3 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

4 Merchant Shipping Act 1995 s 70(1). As to the application of s 70 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425. As to the contract of employment generally see **EMPLOYMENT** vol 39 (2009) PARA 1 et seq.

5 'Accident' in the popular and ordinary sense of the word denotes an unlooked-for mishap or an untoward event which is not expected or designed: *Fenton v J Thorley & Co Ltd* [1903] AC 443 at 448, HL, per Lord Macnaghten. See also *R v Morris* [1972] 1 All ER 384, [1972] 1 WLR 228, CA (an unintended occurrence which has an adverse physical effect).

6 Merchant Shipping Act 1995 s 70(2).

7 Merchant Shipping Act 1995 s 70(3).

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1251. Seaman's civil liability for acts of smuggling.

If a seaman¹ employed in a United Kingdom ship² is found in civil proceedings before a court in the United Kingdom to have committed an act of smuggling, whether within or outside the United Kingdom, he is liable to make good any loss or expense that the act has caused to any other person³.

1 As to the meaning of 'seaman' see PARA 424.

2 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

3 Merchant Shipping Act 1995 s 71. As to the application of s 71 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

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1252. Fines imposed under foreign immigration laws.

Provision is made¹ where, at a time when a United Kingdom ship² is in the national or territorial waters of any country outside the United Kingdom, a seaman³ employed in the ship is absent without leave and present in that country in contravention⁴ of that country's laws⁵.

If, by reason of the contravention, a penalty is incurred under those laws by the persons employing the seaman, the penalty is to be treated as attributable to his absence without leave and may be recovered⁶ from him as special damages for breach of contract⁷.

If, by reason of the contravention, a penalty is incurred under those laws by any other person, the amount thereof (or, if that amount exceeds £100, £100) may be recovered by him from the seaman⁸.

1 Ie by the Merchant Shipping Act 1995 s 72(2), (3) (see the text and notes 6-8), whose application is determined by s 72(1): see s 72(1).

2 As to the meaning of 'United Kingdom ship' see PARA 230. As to the meaning of 'ship' under the Merchant Shipping Act 1995 see PARA 229; and as to the meaning of 'United Kingdom' see PARA 17 note 3.

3 As to the meaning of 'seaman' see PARA 424.

4 As to the meaning of 'contravention' see PARA 50 note 3.

5 Merchant Shipping Act 1995 s 72(1). As to the application of s 72 see PARA 423; and as to the power to grant exemptions with respect to fishing vessels see PARA 425.

6 Ie subject to the Merchant Shipping Act 1995 s 70 (see PARA 1250): see s 72(2).

7 Merchant Shipping Act 1995 s 72(2).

8 Merchant Shipping Act 1995 s 72(3).

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(5) DETENTION OF SHIPS

1253. Enforcing detention of ship under the Merchant Shipping Act 1995.

Where, under the Merchant Shipping Act 1995, a ship¹ is to be or may be detained, any of the following officers may detain the ship²:

- 1568 (1) any commissioned naval³ or military⁴ officer⁵;
- 1569 (2) any officer of a Minister of the Crown⁶ who is authorised by the Secretary of State⁷, either generally or in a particular case, to exercise powers⁸ for the purposes of enforcing the detention of a ship⁹;
- 1570 (3) any officer of Revenue and Customs¹⁰; and
- 1571 (4) any British consular officer¹¹.

A notice of detention may¹²:

- 1572 (a) include a direction that the ship either must remain in a particular place¹³, or must be moved to a particular anchorage or berth¹⁴; and
- 1573 (b) if it includes such a direction, specify circumstances relating to safety or the prevention of pollution in which the master may move his ship from that place, anchorage or berth¹⁵.

If a ship, as respects which notice of detention has been served on the master¹⁶, either:

- 1574 (i) proceeds to sea¹⁷, otherwise than in accordance with such a notice, before it is released by a competent authority¹⁸; or
- 1575 (ii) fails to comply with a direction given under head (a) above¹⁹,

the master of the ship is guilty of an offence²⁰ and liable, on conviction on indictment, to a fine, or, on summary conviction, to a fine not exceeding £50,000²¹. The owner of a ship, and any person who sends to sea a ship, as respects which an offence is committed under head (i) or head (ii) above, is also guilty, if party or privy to the offence, of an offence and liable accordingly²².

Where a ship proceeding to sea in contravention²³ of head (i) above, or failing to comply with a direction given under head (a) above, carries away without his consent any of the following who is on board the ship in the execution of his duty²⁴, namely:

- 1576 (A) any officer authorised²⁵ to detain the ship²⁶; or
- 1577 (B) any surveyor of ships²⁷,

the owner and master of the ship are each liable to pay all expenses of and incidental to the officer or surveyor being so carried away²⁸, and are guilty of an offence²⁹ and liable, on conviction on indictment, to a fine, or, on summary conviction, to a fine not exceeding the statutory maximum³⁰.

Where, under the Merchant Shipping Act 1995, a ship is to be detained, an officer of Revenue and Customs must, and where under that Act a ship may be detained an officer of Revenue and Customs may, refuse to clear the ship outwards or grant a transire³¹ to the ship³²; and, where any provision of the Merchant Shipping Act 1995 provides that a ship may be detained until any document is produced to the proper officer of Revenue and Customs, the officer able to grant a clearance or transire of the ship is, unless the context otherwise requires, that officer³³.

1 As to the meaning of 'ship' see PARA 229.

2 Merchant Shipping Act 1995 s 284(1).

Safety regulations may provide that, in such cases as are prescribed by the regulations, a ship is liable to be detained and that the Merchant Shipping Act 1995 s 284 is to have effect, with such modifications, if any, as are prescribed by the regulations, in relation to the ship: see s 85(7)(a); and PARA 591. Accordingly, certain provisions of s 284 are applied (with modifications) for the purposes of:

- 68 (1) the Merchant Shipping (Provisions and Water) Regulations 1989, SI 1989/102; Interpretation Act 1978 s 17(2)(b) (see PARA 627);
- 69 (2) the Merchant Shipping (Gas Carriers) Regulations 1994, SI 1994/2464 (see PARA 599);
- 70 (3) the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 404 et seq);
- 71 (4) the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, SI 1997/2962 (see PARA 623);
- 72 (5) the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001, SI 2001/3209 (see PARA 1180);
- 73 (6) the Merchant Shipping (Safety of Navigation) Regulations 2002, SI 2002/1473 (see PARAS 532, 641 et seq);
- 74 (7) the Merchant Shipping (Medical Examination) Regulations 2002, SI 2002/2055 (see PARA 629);
- 75 (8) the Merchant Shipping (Hours of Work) Regulations, SI 2002/2125 (see PARA 625);
- 76 (9) the Merchant Shipping (Fire Protection) Regulations 2003, SI 2003/2950 (see PARA 640);
- 77 (10) the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049 (see PARA 625);
- 78 (11) the Merchant Shipping (High-Speed Craft) Regulations 2004, SI 2004/302 (see PARA 614 et seq);
- 79 (12) the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713 (see PARA 626);
- 80 (13) the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004, SI 2004/2110 (see PARA 659);
- 81 (14) the Merchant Shipping (Ro-Ro Passenger Ships) (Stability) Regulations 2004, SI 2004/2884 (see PARA 599);
- 82 (15) the Merchant Shipping (Bridge Visibility) (Small Passenger Ships) Regulations 2005, SI 2005/2286 (see PARA 599);
- 83 (16) the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006, SI 2006/2183 (see PARA 646);

- 84 (17) the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006, SI 2006/2184 (see PARA 646);
- 85 (18) the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006, SI 2006/3223 (see PARA 1135);
- 86 (19) the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006, SI 2006/3224 (see PARA 1135);
- 87 (20) the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007, SI 2007/3075 (see PARA 636); and
- 88 (21) the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100 (see PARA 638).

An Order in Council under the Merchant Shipping Act 1995 s 128(1) also may provide for the detention of certain ships and for the application of s 284 in relation thereto: see s 128(3)(i); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 360.

See also the Aviation and Maritime Security Act 1990 s 35 (detention of ships) (cited in **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 728); the Animal Welfare Act 2006 s 55(3) (power to stop and detain vessels, aircraft and hovercraft) (cited in **ANIMALS** vol 2 (2008) PARA 848); the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (cited in **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 365 et seq); and the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003, SI 2003/1809 (cited in **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 421-424).

- 3 As to the meaning of 'commissioned naval officer' see PARA 47 note 12.
- 4 As to the meaning of 'commissioned military officer' see PARA 235 note 4.
- 5 Merchant Shipping Act 1995 s 284(1)(a).
- 6 As to the meaning of 'Minister of the Crown' see PARA 71 note 6.
- 7 As to the Secretary of State see PARA 38.
- 8 Ie under the Merchant Shipping Act 1995 s 284: see s 284(1)(b) (substituted by the Merchant Shipping and Maritime Security Act 1997 s 9, Sch 1 para 5(1), (2)).
- 9 Merchant Shipping Act 1995 s 284(1)(b) (as substituted: see note 8).
- 10 Merchant Shipping Act 1995 s 284(1)(c) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). As to the appointment of officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901 et seq.
- 11 Merchant Shipping Act 1995 s 284(1)(d). As to British consular officers see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 30.
- 12 Merchant Shipping Act 1995 s 284(1A) (added by the Merchant Shipping and Maritime Security Act 1997 Sch 1 para 5(1), (3)).
- 13 Merchant Shipping Act 1995 s 284(1A)(a)(i) (as added: see note 12).
- 14 Merchant Shipping Act 1995 s 284(1A)(a)(ii) (as added: see note 12).
- 15 Merchant Shipping Act 1995 s 284(1A)(b) (as added: see note 12).
- 16 As to the meaning of 'master' see PARA 424.
- 17 For these purposes, any reference to proceeding to sea includes a reference to going on a voyage or excursion that does not involve going to sea; and references to sending or taking to sea are to be construed accordingly: Merchant Shipping Act 1995 s 284(8).
- 18 Merchant Shipping Act 1995 s 284(2) (substituted by the Merchant Shipping and Maritime Security Act 1997 Sch 1 para 5(1), (4)).
- 19 Merchant Shipping Act 1995 s 284(2A) (s 284(2A), (2B) added by the Merchant Shipping and Maritime Security Act 1997 Sch 1 para 5(1), (4)).

20 Merchant Shipping Act 1995 s 284(2), (2A) (s 284(2) as substituted (see note 18), s 284(2A) as added (see note 19)).

21 Merchant Shipping Act 1995 s 284(2B) (as added: see note 19). As to the time limit for summary offences seePARA 1100; as to offences by officers of bodies corporate seePARA 1102; as to jurisdiction in relation to offences seePARA 1103; as to jurisdiction over ships lying off the coast seePARA 1104; as to jurisdiction in the case of offences on board ship seePARA 1105; as to offences committed by British seamen seePARA 1106; and as to proof etc of exemption seePARA 1112.

22 Merchant Shipping Act 1995 s 284(3) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 1 para 5(1), (5)).

23 As to the meaning of 'contravention' seePARA 50 note 3.

24 Merchant Shipping Act 1995 s 284(4) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 1 para 5(1), (6)).

25 le under the Merchant Shipping Act 1995 s 284(1) (see the text and notes 1-11): see s 284(4)(a).

26 Merchant Shipping Act 1995 s 284(4)(a).

27 Merchant Shipping Act 1995 s 284(4)(b). As to the meaning of 'surveyor of ships' seePARA 46 note 13. As to the appointment of surveyors seePARA 46.

28 Merchant Shipping Act 1995 s 284(4)(i) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 1 para 5(1), (6)).

29 Merchant Shipping Act 1995 s 284(4)(a)(ii).

30 Merchant Shipping Act 1995 s 284(5). As to the meaning of 'statutory maximum' seePARA 1099.

31 A transire is a warrant from the custom-house to let goods pass: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1065.

32 Merchant Shipping Act 1995 s 284(6) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)).

33 Merchant Shipping Act 1995 s 284(7) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)).

UPDATE

1253 Enforcing detention of ship under the Merchant Shipping Act 1995

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/SHIPPING AND MARITIME LAW (VOLUME 93 (2008) 5TH EDITION, PARAS 1-590; VOLUME 94 (2008) 5TH EDITION, PARAS 591-1254)/14. OFFENCES AND LEGAL PROCEEDINGS/(5) DETENTION OF SHIPS/1254. Sums ordered to be paid leviable by distress on the ship.

1254. Sums ordered to be paid leviable by distress on the ship.

Where any court has power to make an order directing payment to be made of any seaman's wages¹, fines or other sums of money, then, if the person directed to pay is the master² or owner of the ship³ and the money directed to be paid is not paid in accordance with the order, the court which made the order may direct the amount remaining unpaid to be levied by distress of the ship and its equipment⁴. The remedy so made available⁵ is in addition to any other powers for compelling the payment of money ordered to be paid⁶.

1 As to the meaning of 'seaman' see PARA 424; and as to the meaning of 'wages' see PARA 464 note 6.

2 As to the meaning of 'master' see PARA 424.

3 As to the meaning of 'ship' see PARA 229.

4 Merchant Shipping Act 1995 s 285(1).

5 le by the Merchant Shipping Act 1995 s 285: see s 285(2).

6 Merchant Shipping Act 1995 s 285(2).

